TITLE 45.—RAILROADS

Chap. Sec.
16. Regional Rail Reorganization [New]..... 701

Chapter 1.—SAFETY APPLIANCES AND EQUIPMENT ON RAILROAD ENGINES AND CARS, AND PROTECTION OF EMPLOYEES AND TRAVELERS

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 44–405 of the District of Columbia Code.

§§ 1 to 7.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 42 section 4916; title 49 section 1655.

§§ 8 to 10.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 42 section 4916; title 49 section 1655.

§§ 11 to 16.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 42 section 4916; title 49 section 1655.

§§ 17 to 21.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 49 section 1655.

§ 22. Inspection of locomotives and appurtenances; definitions.

REORGANIZATION PLAN NO. 3 OF 1965

Eff. July 27, 1965, 30 F.R. 9351, 79 Stat. 1320

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 27, 1965, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see section 901 et seq. of Title 5, Government Organization and Employees].

LOCOMOTIVE INSPECTION

Section 1. Transfer of functions to Interstate Commerce Commission. Except to the extent inconsistent with the provisions of section 2(b) hereof, all functions now vested in the director of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of locomotives, including the functions so vested by the Act of February 17, 1911, ch. 103, 36 Stat. 913, as amended (45 U.S.C. 22–29; 30–34), and by section 2 of the Act of March 4, 1915, ch. 169, 38 Stat. 1192, as amended (45 U.S.C. 30), are hereby transferred to the Interstate Commerce Commission.

Sec. 2. Abolitions. (a) All offices of director of locomotive inspection, assistant director of locomotive inspection, and district inspector of locomotives, provided for in the Acts referred to above (45 U.S.C. 22–34) are hereby abolished. The Interstate Commerce Commission shall make such provisions as it deems to be necessary respecting the winding up of any outstanding affairs of the officers whose offices are abolished by the provisions of this reorganization plan.

(b) The functions with respect to dividing the territory comprising the several States and the District of Columbia into fifty locomotive boiler-inspection districts, vested in the director of locomotive inspection by section 4 of the above-mentioned Act of February 17, 1911 (45 U.S.C. 26), are hereby abolished.

Sec. 3. Performance of functions. The Interstate Commerce Commission may from time to time make such provisions as it shall deem appropriate authorizing the performance by any officer, employee, or organizational entity under the Commission of any function transferred to the Commission by the provisions of section 1 of this reorganization plan, but the Commission may not make any such provision which is in conflict with section 17(2) of the Interstate Commerce Act [section 17(2) of Title 49, Transportation].

Sec. 4. Records, property and funds. (a) Consonant with section 4 of the Reorganization Act of 1949, as amended and this reorganization plan, the Interstate Commerce Commission shall make such provisions as it shall deem necessary respecting the transfer or other disposition of the records and property which are affected by a reorganization contained in the reorganization plan.

(b) Unexpended balances of appropriations, allocations, and other funds, available or to be made available for the Interstate Commerce Commission for expenses necessary to carry out locomotive inspection activities, shall continue to be available therefor under this reorganization plan.

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the foregoing provisions of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

Sec. 5. Personnel. (a) The Interstate Commerce Commission may employ and compensate such personnel as may be necessary to carry out the functions transferred to the Commission by this reorganization plan under the classified civil service and pursuant to the Classification Act of 1949, as amended [chapter 51 of Title 5].

(b) The Interstate Commerce Commission shall appoint to a position under the classified civil service, without change in grade or salary, each person who immediately prior to the taking effect of this reorganization plan held the office of district inspector of locomotives. Such appointments shall be deemed to be made without any break in the service of any individual concerned and the provisions of this reorganization plan shall not be deemed to effect an involuntary separation of any district inspector of locomotives for the purposes of section 6(d) of the Civil Service Retirement Act (5 U.S.C. 2256(d) [see section 5101 et seq. of Title 5]) or for the purposes of any other provision of law.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1965, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization of the locomotive inspection activities of certain personnel employed by or attached to the Interstate Commerce Commission.

I have stressed that we must reorganize and modernize the Government's organization structure in order to focus responsibilities, increase efficiency, and meet present-day needs more effectively. The reorganization plan, which accords with recommendations made to me by the Interstate Commerce Commission, supports these objectives. It will make possible necessary changes in the organization and administration of the Commission's railroad safety operations.

The Commission's ability to organize and carry out most effectively its responsibilities for railroad safety is now severely limited by certain anachronistic provisions of the locomotive inspection statutes. These provisions go back to an earlier period before steam locomotives were replaced almost completely by diesel engines. At that time

locomotive boilers were temperamental and dangerous and special measures were required to enforce adequate safety standards. Present law specifies in detail the method of appointing locomotive inspectors, the functions to be performed by them, and the organization structure for administering inspection activities. While these provisions may have been suited to conditions 50 years ago, they are clearly inappropriate today.

Progress in railroad technology has not eliminated the need for locomotive inspection. Locomotive inspection is still essential for the safety of employees, passengers, and cargo. The Interstate Commerce Commission, however, properly should not be held to account for the performance of this important function as long as it lacks authority to make those changes in organization and operations which it deems necessary to meet current safety needs and to promote maximum economy and efficiency. The primary purpose of the accompanying reorganization plan is to terminate outdated arrangements which now stand in the way of the most effective management of the Commission's railroad safety program.

Organizational flexibility is at present restricted by the statutory requirement that there be 50 locomotive inspection districts and at least 1 inspector for each such district. The number of inspectors and districts cannot be adjusted to accommodate to changes in workload or other relevant factors.

Locomotive inspection is rigidly separated from related railroad safety activities performed under the Interstate Commerce Commission. The locomotive inspection statutes restrict inspectors of locomotives to the inspection of locomotives only and prevent the inspection of locomotives (except brakes and safety appliances) by other Commission railroad safety personnel. Thus, the Commission is prevented from making the most effective utilization of its total staff of locomotive and train inspectors. In order to eliminate the present uneconomical duplicate visits to railroad yards and otherwise to promote the most economical and effective administration of its railroad safety responsibilities, the Commission should have the authority to assign staff to duties for which they may be qualified by training and experience. The reorganization plan will make this possible.

Organizational flexibility is hampered further by the provision for Presidential appointment and Senate confirmation of a director and two assistant directors of locomotive inspection. Originally, these officials were to be selected with reference to their practical knowledge of the construction and repair of boilers. Later amendments broadened their responsibilities to embrace all parts of the locomotive and tender. These clearly are not policy-making positions, warranting Presidential appointment. As is now the case with other comparable positions where appointments should be based primarily on professional and technical qualifications, personnel supervising locomotive inspection functions should be appointed under the classified civil service.

By eliminating the present cumbersome restrictions on inspection districts, the duties of locomotive inspectors, and the appointment of the director and assistant directors of locomotive inspection, the plan will make it possible for the Commission to utilize its personnel more efficiently, integrate the work performed by locomotive inspectors with that performed by other Commission railroad safety inspectors, and take full advantage of recent improvements in the organization of the Commission's central office and field activities.

Upon the taking effect of the reorganization plan—

1. All functions of the director of locomotive inspection, the assistant directors of locomotive inspection, and district locomotive inspectors will be transferred to the Interstate Commerce Commission. Suitable powers of delegation with respect to the functions so transferred will be conferred upon the Commission.

2. The position of director of locomotive inspection, the two positions of assistant director of locomotive inspection, and all positions of district locomotive inspector will be abolished. The Commission will be required to appoint to a position under the classified civil service, as provided in the reorganization plan, each person who immediately prior to the taking effect of the plan held the office of district inspector of locomotives; such appointments will be deemed to be made without any break in service.

3. The function of dividing the territory comprising the several States and the District of Columbia into 50 locomotive-boiler-inspection districts will be abolished.

After investigation, I have found and hereby declare that each reorganization included in the reorganization plan transmitted herewith is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended. I have also found and hereby declare that, by reason of the reorganizations made by the reorganization plan, it is necessary to include in the plan the provisions contained in section 5 thereof. The rates of compensation thereunder are those which I have found to prevail in respect of comparable positions in the executive branch of the Government.

The statutory authority for the exercise of the functions to be abolished by section 2(b) of the reorganization plan is contained in section 4 of the act of February 17, 1911 (ch. 103, 36 Stat. 914, as amended).

The reorganizations provided for in the reorganization plan will produce some immediate savings and significant long-range economies. The latter will result from future improvements in the organization and administration of the affected functions made possible by the plan. Since the plan will open the way for the more effective utilization of safety inspection staffs of the Interstate Commerce Commission, it will yield a significantly increased measure of safety inspection activity for each dollar spent for this purpose. It is, however, impracticable to specify or itemize at this time the reductions of expenditures which it is probable will be brought about by the taking effect of the reorganizations included in the reorganization plan.

Under the accompanying reorganization plan, all essential Government railroad safety services to the traveling public and employees will continue to be performed. The plan provides urgently needed modernization of the organization and procedures in the Interstate Commerce Commission's railroad safety program. I recommend that the Congress allow the reorganization plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE
May 27, 1965.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 4916; title 49 section 1655.

§§ 23, 28 to 38.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 49 section 1655.

§ 39. Penalty for failure to make report.

Any common carrier failing to make the report provided for in section 38 of this title within thirty days after the end of any month shall be deemed guilty of a misdemeanor, and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than $100 for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same. In lieu of the foregoing, any such carrier may be required to pay a civil penalty pursuant to subsections (b) and (c) of section 438 of this title. (As amended Jan. 3, 1975, Pub. L. 93–633, title II, § 204(b), 88 Stat. 2166.)

AMENDMENTS

1975—Pub. L. 93–633 made a carrier liable for payment of a civil penalty under section 438 (b) and (c) of this title in lieu of a criminal penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42, 43, 436 of this title; title 42 section 4916; title 49 section 1655.

§§ 40 to 43.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 42 section 4916; title 49 section 1655.

Chapter 3.—HOURS OF SERVICE OF EMPLOYEES

§§ 61 to 64b.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 49 section 1655.

Chapter 4.—CARE OF ANIMALS IN TRANSIT

§ 71. Transportation of animals; time of confinement; unloading for rest and feeding; unloading sheep.

STUDY AND INVESTIGATION OF LIVESTOCK LOSSES DURING TRANSPORTATION IN INTERSTATE COMMERCE; RESEARCH PROGRAM; INTERIM AND FINAL REPORTS; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 91–524, title VIII, § 809, as added Pub. L. 93–86, § 1(27)(B), Aug. 10, 1973, 87 Stat. 237, provided that:

"(a) The Secretary of Agriculture is authorized and directed to carry out a comprehensive study and investigation to determine the reasons for the extensive loss of livestock sustained each year, through injury and disease, while such livestock is being transported in interstate commerce for commercial purposes. The Secretary is also authorized and directed to conduct, in connection with such study and investigation, an intensive research program for the purpose of developing measures that can be taken to reduce materially the number of animals lost, through injury and disease during transportation for commercial purposes.

"(b) The Secretary of Agriculture shall submit to the Congress not more than four years after the date of enactment of this section [Aug. 10, 1973] a final report on the results of his study and investigation and research together with such recommendations for administrative and legislative action as he deems appropriate. He shall submit such interim reports to the Congress as he deems advisable, but at least one at the end of each twelve month period following the date of enactment of this section.

"(c) There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, but not more than $500,000 in any fiscal year."

Chapter 8.—RAILWAY LABOR

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 228a, 231, 362, 771, 772, 774 of this title; title 18 section 1951; title 26 section 3231; title 28 section 1445; title 29 sections 152, 1002; title 42 section 2000e; title 43 section 1333.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 36–601 of the District of Columbia Code.

§ 153. National Railroad Adjustment Board.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 777 of this title.

CARRIERS BY AIR

§§ 181 to 188.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 26 section 410.

Chapter 9.—RETIREMENT OF RAILROAD EMPLOYEES

SUBCHAPTER III.—RAILROAD RETIREMENT ACT OF 1937

Sec.

228s–3. Hospital insurance benefits for the disabled; certification as qualified individuals; applicability of other provisions [New].

SUBCHAPTER IV.—RAILROAD RETIREMENT ACT OF 1974 [NEW]

231. Definitions.
231a. Annuity eligibility requirements.
231b. Computation of annuities.
231c. Computation of spouse and survivor annuities.
231d. Annuity beginning and ending dates.
231e. Lump-sum payments.
231f. Railroad Retirement Board.
231g. Court jurisdiction.
231h. Returns of compensation; conclusiveness.
231i. Erroneous payments; adjustment; recovery; liability of officers.
231j. Waiver of annuities.
231k. Incompetence.
231l. Penalties.
231m. Assignability; exemption from levy.
231n. Railroad Retirement Account.
231o. Private pensions.
231p. Free transportation.
231q. Crediting service under Social Security Act.
231r. Automatic benefit eligibility requirement adjustments.
231s. Separability of provisions.
231t. Short title.

SUBCHAPTER I.—RAILROAD RETIREMENT ACT OF 1934

§§ 201 to 208. Omitted.

§ 209. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1956, 80 Stat. 649.

§§ 210 to 214. Omitted.

SUBCHAPTER II.—RAILROAD RETIREMENT ACT OF 1935

§§ 215 to 228. Omitted.

SUBCHAPTER III.—RAILROAD RETIREMENT ACT OF 1937

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter. The subject matter of the Railroad Retirement Act of 1937 [this subchapter] is now covered by the Railroad Retirement Act of 1974 [subchapter IV of this chapter] according to the following table:

Railroad Retirement Act of 1937	*Railroad Retirement Act of 1974*
228a	231
228b–228e	231a–231e
228f	231o
228g	231o
228h	231h
228i	231i
228j	231f
228k	231g
228l	231m
228m	231l
228n	231s
228o	231n
228p	231f
228q	231q
228r	231p
228s	231k
228s–1	231j
228s–2	231f
228s–3	231f

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 231b, 231f of this title; title 26 section 414; title 29 sections 1002, 1056, 1321; title 42 sections 405, 415, 1395i–1.

§ 228a. Definitions.

For the purposes of this subchapter——

* * * * *

(h)(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips (except as provided under paragraph (2)), or the voluntary payment by an employer, without deduction from the remuneration of the employee, of any tax now or hereafter imposed with respect to the compensation of such employee. Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 1101(a)(15) of Title 8 and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be. For the purposes of determining monthly compensation and years of service and for the purposes of sections 228b and 228e of this title, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3 and (i) such compensation is earned between Dec. 31, 1936, and Apr. 1, 1940, and taxes therein pursuant to sections 262(a) and 263(a) of this title or sections 1500 and 1520 of the Internal Revenue Code of 1939 are not paid prior to July 1, 1940; or (ii) such compensation is earned after Mar. 31, 1940. A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupaton. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 228h of this title, the period during which such compensation will have been earned. In determining the monthly compensation, the average monthly remuneration, and quarters of coverage of any employee, there shall be attributable as compensation paid to him in each calendar month before 1968 in which he is in military service creditable under section 228c–1 of this title the amount of $160 in addition to the compensation, if any, paid to him with respect to such month. In making such a determination there shall be attributable as compensation paid to him for each calendar month after 1967 in which he is in military service so creditable the amount of $260. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining eligibility for and the amount of benefits pursuant to this subchapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service."

* * * * *

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

The opening line and subsec. (h) are set out in this supplement to correct translations appearing therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 228b, 228e, 228g, 231e of this title; title 26 section 3231.

§ 228b. Eligibility for annuities; time of accrual; spouse's annuity.

(a) The following-described individuals, if they shall have been employees on or after the enactment date, and shall have completed ten years of service, shall, subject to the conditions set forth in subsections (b)—(d) of this section, be eligible for annuities after they shall have ceased to render compensated service to any person, whether or not an employer as defined in section 228a (a) of this title (but with the right to engage in other employment to the extent not prohibited by subsection (d) of this section):

* * * * *

2. Individuals who will have attained the age of sixty and will have completed thirty years of service.

3. Individuals who will have attained the age of sixty-two and will have completed less than thirty years of service, but the annuity of such individuals shall be reduced by one one-hundred-and-eightieth

for each calendar month that he or she is under age sixty-five when the annuity begins to accrue.

* * * * *

(e) The spouse of an individual, if—

(i) such individual has been awarded an annuity under subsection (a) of this section or a pension under section 228f of this title and has attained the age of 65, and

(ii) such spouse has attained the age of 65 or in the case of a wife, has in her care (individually or jointly with her husband) a child who meets the qualifications prescribed in section 228e(*l*)(1) of this title (without regard to the provisions of clause (ii) (B) thereof),

shall be entitled to a spouse's annuity equal to one-half of such individual's annuity without regard to section 228c(a) (3), (4), (5), or (6) of this title or pension as in effect before 1970, but not more, with respect to any month, than 110 per centum of an amount equal to the maximum amount which could be paid to anyone, with respect to such month, as a wife's insurance benefit under section 402(b) of Title 42 as amended: *Provided, however,* That if the annuity of the individual is awarded under subdivision (3) of subsection (a) of this section, the spouse's annuity shall be computed or recomputed as though such individual had been awarded the annuity to which he would have been entitled under subdivision (1) of said subsection: *Provided further,* That, if the annuity of the individual is awarded pursuant to a joint and survivor election, the spouse's annuity shall be computed or recomputed as though such individual had not made a joint and survivor election: *And provided further,* That the spouse's annuity provided for herein and in subsection (h) of this section shall be computed without regard to the reductions in the individual's annuity under the first two provisos in section 228c(a)(2) of this title.

The spouse's annuity computed under other provisions of this section shall (before any reduction on account of age) be increased by 15 per centum but not by more than $25. If the individual entitled to such annuity is also entitled to a benefit for the same month under title II of the Social Security Act, there shall be offset against the increase herein provided for any amount by which such individual's social security benefit was increased by the Social Security Amendments of 1969, but in no case shall such offset operate to reduce the increase below $5.

The spouse's annuity computed under the other provisions of this section shall (before any reduction on account of age) be increased by 10 per centum. This paragraph shall be disregarded in the application of the preceding paragraph.

The spouse's annuity computed under the other provisions of this section shall (before any reduction on account of age) be increased by 20 per cenum. This paragraph shall be disregarded in the application of the preceding two paragraphs.

The spouse's annuity computed under the other provisions of this section shall (before any reduction on account of age) be increased in an amount determined by the method of computing increases set forth in subsection (a)(6) of section 228c of this title. The preceding sentence and the other provisions of this subsection shall not operate to increase the annuity of a spouse (before any reduction on account of age) to an amount in excess of the maximum amount of a spouse's annuity as provided in the first sentence of this subsection. This paragraph shall be disregarded in the application of the preceding three paragraphs.

(f) For the purposes of this subchapter, the term "spouse" shall mean the wife or husband of a retirement annuitant or pensioner who (i) was married to such annuitant or pensioner for a period of not less than one year immediately preceding the day on which the application for a spouse's annuity is filed or in the month prior to her or his marriage to such annuitant or pensioner was eligible for an annuity under subsection (a) or (d) of section 228e of this title or, on the basis of disability, under subsection (c) thereof, or is the parent of such annuitant's or pensioner's son or daughter, if, as of the day on which the application for a spouse's annuity is filed, such wife or husband and such annuitant or pensioner were members of the same household, or such wife or husband was receiving regular contributions from such annuitant or pensioner toward her or his support, or such annuitant or pensioner has been ordered by any court to contribute to the support of such wife or husband; and (ii) in the case of a husband, was receiving at least one-half of his support from his wife at the time his wife's retirement annuity or pension began.

* * * * *

(i) The spouse's annuity provided under subsections (e) and (h) of this section without regard to the last paragraph plus the three preceding paragraphs of such subsection (e) shall (before any reduction on account of age) be reduced in accordance with the second proviso in section 228c(a)(2) of this title, except that, notwithstanding other provisions of this subsection, the spouse's annuity shall (before any reduction on account of age) not be less than one-half of the amount computed in section 228c(a)(1) of this title or in that part of section 228c(e) of this title preceding the first proviso, or of the pension increased by $5 or, if the spouse is entitled to benefits under title II of the Social Security Act, by the excess of $5 over 5.8 per centum of the lesser of (i) any benefit to which such spouse is entitled under title II of the Social Security Act, or (ii) the spouse's annuity to which such spouse would be entitled without regard to section 228c(a)(2) of this title and before any reduction on account of age, but in no case shall such an annuity (before any reduction on account of age) be more than the maximum amount of a spouse's annuity as provided in subsection (e) of this section.

(j) In cases where an annuity awarded under subsection (a)(3) or (h) of this section, or section 228e(a) of this title is increased either by a recomputation or a change in the law, the reduction for the increase in the annuity shall be determined separately and the period with respect to which the reduction applies shall be determined as if such increase were a separate annuity payable for and after the first month for which such increase is effective. (As amended July 2, 1971, Pub. L. 92–46, § 2, 85 Stat. 101;

Oct. 4, 1972, Pub. L. 92–460, § 1(b), (c), 86 Stat. 765; July 10, 1973, Pub. L. 93–69, title I, §§ 101, 104(b), (c), 87 Stat. 162, 164.)

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–69, § 101, substituted "Individuals" for "Women" in par. 2 and "Individuals" for "Men who will have attained the age of sixty and will have completed thirty years of service, or individuals" and "annuity of such individuals" for "annuity of such men or individuals" in par. 3.

Subsec. (e). Pub. L. 93–69, § 104(b), inserted in first par. a reference to section 228c(a)(6) of this title, struck from fourth par. second sentence reading "The preceding sentence and the other provisions of this subsection shall not operate to increase the spouse's annuity (before any reduction on account of age) to an amount in excess of the maximum amount of a spouse's annuity as provided in the first sentence of this subsection.", and added fifth par. respecting increase in spouse's annuity computed under section 228c(a)(6) of this title.

Subsec. (i). Pub. L. 93–69, § 104(c), substituted "three" for "two" making text read "the last paragraph plus the three preceding paragraphs".

1972—Subsec. (e). Pub. L. 92–460, § 1(b), inserted in first paragraph a reference to section 228c(a)(5) of this title, struck from third paragraph second sentence reading "The preceding sentence and the next preceding paragraph shall not operate to increase the annuity to an amount in excess of the maximum amount of a spouse's annuity as provided in the first sentence of this subsection.", and added fourth paragraph respecting 20 per centum increase in the spouse's annuity computed under other provisions of this section (before any reduction on account of age), respectively.

Subsec. (i). Pub. L. 92–460, § 1(c), substituted "the last paragraph plus the two preceding paragraphs", for "the last two paragraphs".

1971—Subsec. (e). Pub. L. 92–46, § 2(a), substituted "section 228c((3) or (4) of this title" for "section 228c(a)(3) of this title"; inserted "(before any reduction on account of age)" following "shall" in paragraph increasing spouse's annuity by 15 per centum; struck out last sentence of such paragraph reading "The two preceding sentences shall not operate to increase the annuity to an amount in excess of the maximum amount of a spouse's annuity as provided in the first sentence of this subsection."; and added paragraph increasing spouse's annuity by 10 per centum, respectively.

Subsec. (i). Pub. L. 92–46, § 2(b), substituted "last two paragraphs" for "last paragraph" and inserted "or in that part of section 228c(e) of this title preceding the first proviso, or of the pension," following "section 228c(a)(1) of this title", respectively.

Subsec. (j). Pub. L. 92–46, § 2(c), inserted reference to award of an annuity under section 228e(a) of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 109(a) of Pub. L. 93–69 provided that: "The amendments made by section 101 of this Act [to subsec. (a)(2) and (3) of this section] shall become effective on July 1, 1974: *Provided, however*, That those amendments [to subsec. (a)(2) and (3) of this section] shall not apply to individuals whose annuities began to accrue prior to that date."

Amendment of subsecs. (e) and (i) of this section effective July 10, 1973, except that any increases in annuities or pensions resulting from such amendment shall be effective on the same date as the benefit increases under section 401 et seq. of Title 42 which gave rise to such annuity or pension increases are effective, see section 109(c) of Pub. L. 93–69, set out as a note under section 228c of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–460 effective with respect to annuities accruing for months after August, 1972 and with respect to pensions due in calendar months after September, 1972, see section 5(a) of Pub. L. 92–460, set out as a note under section 228c of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–46 effective with respect to annuities accruing for months after December 1970 and with respect to pensions due in calendar months after January 1971, except that increases in benefits for months prior to July 1971 shall be payable only to an individual entitled to an annuity or pension for July 1971, or who becomes so entitled in later months, on basis of same earnings record, see section 8(a) of Pub. L. 92–46, set out as a note under section 228c of this title.

SHORT TITLE

Section 110 of Pub. L. 93–69 provided that: "This title [which enacted sections 228c(a)(6) and 228e(q) of this title, amended subsecs. (a)(2), (3), (e), and (i) of this section and sections 3201, 3202(a), 3211(a), and 3221(a), (b) of Title 26, and enacted provisions set out as notes under this section, sections 228c, 228f, and 228o of this title, and section 3201 of Title 26] may be cited as the 'Railroad Retirement Amendments of 1973'."

TERMINATION DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–460 of subsecs. (e) and (i) of this section and enactment of provisions set out as a note under this section to cease to apply as of the close of December 31, 1974, and annuities accruing for months after December 31, 1974, and pensions due in calendar months after December 31, 1974, to be computed as if such amendment had not been made, see section 5(b) of Pub. L. 92–460, set out as a note under section 228c of this title.

TERMINATION DATE OF 1971 AMENDMENT

Amendment of subsecs. (e) and (i) by section 2(a)(1), (3),(4), (b)(1) of Pub. L. 92–46 to cease to apply as of close of December 31, 1974, and computation of pensions due in calendar months after December 31, 1974, as if such amendment had not been made, see section 8(b) of Pub. L. 92–46, set out as a note under section 228c of this title.

TERMINATION DATE OF 1970 AMENDMENT

Amendment of section by Pub. L. 91–377 to cease to apply as of the close of December 31, 1974, and annuities accruing for months after December 31, 1974, and pensions due in calendar months after December 31, 1974, to be computed as if such amendment had not been made, see section 6 of Pub. L. 91–377, as amended, set out as a note under section 228c of this title.

SEPARABILITY OF PROVISIONS

Section 301 of Pub. L. 93–69 provided that: "If any provision of this Act [enacting sections 228c(a)(6) and 228e(q) of this title and section 15a(4) of Title 49, amending subsecs. (a)(2), (3), (e), and (i) of this section and sections 3201, 3202(a), 3211(a), and 3221(a), (b) of Title 26, and enacting provisions set out as notes under sections 228b, 228c, 228f, and 228o of this title, section 3201 of Title 26, and section 15a of Title 49] or the application thereof to any person or circumstances should be held invalid, the remainder of such Act or the application of such provision to other persons or circumstances shall not be affected thereby."

RECERTIFICATIONS

All recertifications required by reason of the amendment made by section 104 of Pub. L. 93–69, enacting section 228e(q) of this title and amending subsecs. (e) and (i) of this section, to be made by the Railroad Retirement Board without application therefor, see section 106 of Pub. L. 93–69, set out as a note under section 228c of this title.

Section 3 of Pub. L. 92–460 provided that: "All recertifications required by reason of the amendments made by this Act [enacting sections 228c(a)(5), (e)(VI–X), 228e(p) and amending sections 228b (e), (i) and 228c(e),

(*l*)(1) of this title, and enacting provisions set out as notes under such sections 228b, 228c, and 228e] shall be made by the Railroad Retirement Board without application therefor."

Recertifications required by reason of amendments made by Pub. L. 92–46 to be made by Railroad Retirement Board without application therefor, see section 6 of Pub. L. 92–46, set out as a note under section 228c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 228a, 228c, 228c–1, 228e, 228s–3, 228v, 228y, 231b, 231c of this title.

§ 228c. Computation of annuities.

(a) * * *

* * * * *

(4) The annuity computed under the preceding provisions of this subsection and that part of subsection (e) of this section which precedes the first proviso shall be increased by 10 per centum.

(5) The individual's annuity computed under the preceding provisions of this subsection and that part of subsection (e) of this section which precedes the first proviso shall be increased by 20 per centum.

(6) If Title II of the Social Security Act is amended to provide an increase in benefits payable thereunder at any time during the period July 1, 1973, through December 31, 1974, the individual's annuity computed under the preceding provisions of this subsection and that part of subsection (e) of this section which precedes the first proviso shall be increased in an amount equal to the difference between (i) the amount (before any reduction on account of age) which would be payable to such individual under the then current law if his or her annuity were computed under the first proviso of subsection (e) of this section, without regard to the words "plus 10 per centum of such amount" contained therein; and (ii) the amount (before any reduction on account of age) which would have been payable to such individual under the law as in effect prior to July 1, 1973, if his or her annuity had been computed under such first proviso of subsection (e) of this section, without regard to the words "plus 10 per centum of such total amount" contained therein (assuming for this purpose that the eligibility conditions and the proportions of the primary insurance amounts payable under the then current Social Security Act had been in effect prior to July 1, 1973): *Provided, however,* That, in computing such amount, only the social security benefits which would have been payable to the individual whose annuity is being computed under this subchapter shall be taken into account: *Provided further,* That if an annuity accrues to an individual for a part of a month the added amount payable for such part of a month under this section shall be one-thirtieth of the added amount payable under this section for an entire month, multiplied by the number of days in such part of a month. If wages or compensation prior to 1951 are used in making any computation required by this paragraph, the Railroad Retirement Board shall have the authority to approximate the primary insurance amount to be utilized in making such computation. In making any computation required by this paragraph, any benefit to which an individual may be entitled under Title II of the Social Security Act shall be disregarded. For purposes of this paragraph, individuals entitled to an annuity under section 228b(a)(2) of this title shall be deemed to be age 65, and individuals entitled to an annuity under section 228b(a)(3) of this title who have not attained age 62 shall be deemed to be age 62. Individuals entitled to annuities under section 228b(a)(4) or 228b(a)(5) of this title whom no disability freeze has been granted shall be treated in the same manner for purposes of this paragraph as individuals entitled to annuities under section 228b(a)(4) or 228b(a)(5) of this title for whom a disability freeze has been granted. In the case of an individual who is entitled to an annuity under this subchapter but whose annuity is based on insufficient quarters of coverage to have a benefit computed, either actually or potentially, under the first proviso of subsection (e) of this section, the average monthly wage to be used in determining the amount to be added to the annuity of such individual shall be equal to the average monthly compensation or the average monthly earnings, whichever is applicable, used to enter the table in subsection (a)(2) of this section for purposes of computing other portions of such individual's annuity. If the individual entitled to an increase determined under the preceding provisions of this paragraph is also entitled to a benefit for the same month under title II of the Social Security Act, there shall, any provisions to the contrary notwithstanding, be offset against the total of the increase, or increases, of such individual determined under the preceding provisions of this paragraph, any amount by which such individual's social security benefit was increased during the period July 1, 1974, through December 31, 1974. For purposes of approximating any such offsets, the Railroad Retirement Board is authorized to determine the percentage figure which, when applied against current social security benefits, will produce approximately the amount of the increase, or increases, in social security benefits during the period July 1, 1974, through December 31, 1974. The amount produced by applying such percentage figure to the current social security benefit of an individual shall be the amount utilized in making the offset prescribed by the provisions of this paragraph.

(b) The "years of service" of an individual shall be determined as follows:

(1) In the case of an individual who was an employee on the enactment date, the years of service shall include all his service subsequent to Dec. 31, 1936, and if the total number of such years is less than thirty, then the years of service shall also include his service prior to Jan. 1, 1937, but not so as to make his total years of service exceed thirty: *Provided, however,* That with respect to any such individual who rendered service to any employer subsequent to Dec. 31, 1936, and who on the enactment date was not an employee of an employer conducting the principal part of its business in the United States no greater proportion of his service rendered prior to Jan. 1, 1937, shall be included in his "years of service"

than the proportion which his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this subchapter) for service subsequent to Dec. 31, 1936, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (including compensation in any month in excess of $300) for service rendered anywhere to an employer subsequent to Dec. 31, 1936.

(2) In all other cases, the years of service shall include only the service subsequent to Dec. 31, 1936.

(3) Where the years of service include only part of the service prior to Jan. 1, 1937, the part included shall be taken in reverse order beginning with the last calendar month of such service.

* * * * *

(e) In the case of an individual having a current connection with the railroad industry, the minimum annuity payable shall, before any reduction pursuant to section 228b(a)(3) of this title, be whichever of the following is the least: (1) $5.35 multiplied by the number of his years of service; or (2) $89.35; or (3) 118 per centum of his monthly compensation: *Provided, however,* That if for any month in which an annuity accrues and is payable under this subchapter the annuity to which an employee is entitled under this subchapter (or would have been entitled except for a reduction pursuant to section 228b(a)(3) of this title or a joint and survivor election), together with his or her spouse's annuity, if any, or the total of survivor annuities under this subchapter deriving from the same employee is less than the total amount, or the additional amount, plus 10 per centum of the total amount which would have been payable to all persons for such month under the Social Security Act if such employee's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act and quarters of coverage were determined in accordance with section 228e(*l*)(4) of this title, such annuity or annuities shall be increased proportionately to such total amount, or such additional amount, plus 10 per centum of such total amount: *Provided, further,* That if an annuity accrues to an individual for a part of a month, the amount payable for such part of a month under the preceding proviso shall be one-thirtieth of the amount payable under the proviso for an entire month, multiplied by the number of days in such part of a month.

For the purposes of the first proviso in the first paragraph of this subsection, (i) completely and partially insured individuals shall be deemed to be fully and currently insured, respectively; (ii) individuals entitled to insurance annuities under subsections (a)(1) and (d) of section 228e of this title shall be deemed to have attained age 62 (the provisions of this clause shall not apply to individuals who, though entitled to insurance annuities under section 228e(a)(1) of this title, were entitled to an annuity under section 228e(a)(2) of this title for the month before the month in which they attained age 60); (iii) individuals entitled to insurance annuities under section 228e(a)(2) of this title shall be deemed to be entitled to insurance benefits under section 402(e) or (f) of Title 42 on the basis of disability; (iv) individuals entitled to insurance annuities under section 228e(c) of this title on the basis of disability shall be deemed to be entitled to insurance benefits under section 402(d) of Title 42 on the basis of disability; (v) women entitled to spouses' annuities pursuant to elections made under section 228b(h) of this title shall be deemed to be entitled to wives' insurance benefits determined under section 402(q) of Title 42; (vi) individuals not entitled to an annuity under section 228b or 228e of this title shall not be included in the computation under such first proviso except a spouse who could qualify for an annuity under section 228b (e) or (h) of this title if the employee from whom the spouse's annuity under this subchapter would derive had attained age sixty-five, and such employee's children who meet the definition as such contained in section 416(e) of Title 42; (vii) after an annuity has been certified for payment and such first proviso was inapplicable after allowing for any waiting period under section 423(c)(2) of Title 42, and after having considered the inclusion of all persons who were then eligible for inclusion in the computation under such first proviso, or was then applicable but later became inapplicable, any recertification in such annuity under such first proviso shall not take into account individuals not entitled to an annuity under section 228b or 228e of this title except a spouse who could qualify for an annuity under section 228b(h) of this title when she attains age sixty-two if the employee from whom the spouse's annuity would derive had attained age sixty-five, and who was married to such employee at the time he applied for the employee annuity; (viii) in computing the amount to be paid under such first proviso, the only benefits under title II of the Social Security Act which shall be considered shall be those to which the individuals included in the computation are entitled; (ix) the average monthly wage for an employee during his lifetime shall include (A) only his wages and self-employment income creditable under the Social Security Act through the later of December 31, 1971, or December 31 of the year preceding the year in which his annuity began to accrue, and (B) his compensation up to the date his annuity began to accrue; (x) in computing the average monthly wage in clause (ix) above, section 415(b)(2)(C)(ii) of Title 42 shall, solely for the purpose of including compensation up to the date the employee's annuity began to accrue, be deemed to read as follows: "the year succeeding the year in which he died or retired and, for the purposes of this subsection, any possible deductions under subsections (g) and (h)(2) of section 403 of Title 42 shall be disregarded; (xi) years of coverage as defined in section 415(a) of Title 42 for an employee who has been awarded an annuity under section 228b of this title shall be determined only on the basis under the Social Security Act through the later of December 31, 1971, or December 31 of the year preceding the year in which his annuity began to accrue; and (xii) in determining increment months for the purpose of a delayed retirement increase, section 303(w)(2)(B)(ii) of the Social Secur-

ity Act [1] shall be deemed to read as follows: "such individual was not entitled to an old-age insurance benefit".

Notwithstanding the provisions of section 402(q) of Title 42, the amount determined under the proviso in the first paragraph of this subsection for a widow or widower who is or has been entitled to an annuity under section 228e(a)(2) of this title, shall be equal to 90.75 per centum of the primary insurance amount (reduced in accordance with section 403(a) of Title 42) of the employee as determined under this subsection, and the amount so determined shall be reduced by three-tenths of 1 per centum for each month the annuity would be subject to a reduction under section 228e(a)(2) of this title (adjusted upon attainment of age 60 in the same manner as an annuity under section 228e(a)(1) of this title which, before attainment of age 60, had been payable under section 228e(a)(2) of this title); and the amount so determined shall be reduced by the amount of any benefit under title II of the Social Security Act to which she or he is entitled.

In cases where an annuity under this subchapter is not payable under the first proviso in the first paragraph of this subsection on January 2, 1968, the primary insurance amount used in determining the applicability of such proviso shall, except in cases where the employee died before 1939, be derived after deeming the individual on whose service and compensation the annuity is based (i) to have become entitled to social security benefits, or (ii) to have died without being entitled to such benefits, after January 2, 1968. For this purpose, the provision of section 415(b)(3) of Title 42 that the employee must have reached age 65 (62 in the case of a woman) after 1960 shall be disregarded and there shall be substituted for the nine-year period prescribed in section 415(d)(1)(B)(i) of Title 42, the number of years elapsing after 1936 and up to the year of death if the employee died before 1946.

For the purposes of this subsection, the Board shall have the same authority to determine a "period of disability" within the meaning of section 416(i) of Title 42, with respect to any employee who will have filed application therefor and (i) have completed ten years of service or (ii) have been awarded an annuity, as the Secretary of Health, Education, and Welfare would have to determine such a period under such section 416(i) of Title 42 if the employee met the requirements of clauses (A) and (B) of paragraph (3) of such section, considering for purposes of such determination that all his service as an employee after 1936 constitutes "employment" within the meaning of subchapter II of the Social Security Act and determining his quarters of coverage for such purposes by presuming his compensation in a calendar year to have been paid in equal proportions with respect to all months in which he will have been in service as an employee in such calendar year: *Provided*, That an application for an annuity filed with the Board on the basis of disability shall be deemed to be an application to determine such a period of disability, and such an application filed with the Board on or before the date of the enactment of this paragraph shall, for purposes of this subsection and section 416(i)(4) of Title 42, be deemed filed after December 1954 and before July 1958: *Provided, further*, That, notwithstanding any other provision of law, the Board shall have the authority to make such determination on the basis of the records in its possession or evidence otherwise obtained by it, and a determination by the Board with respect to any employee concerning such a "period of disability" shall be deemed a final decision of the Board determining the rights of persons under this subchapter for purposes of section 228k of this title. An application filed with the Board pursuant to this paragraph shall be deemed filed as of the same date also with the Secretary of Health, Education, and Welfare for the purpose of determining a "period of disability" under section 416(i) of Title 42.

* * * * *

(g) No annuity shall accrue with respect to the calendar month in which an annuitant dies. In cases where an individual entitled to an annuity under this subchapter disappears, no annuity shall accrue to him or to his spouse as such with respect to any month until and unless such individual is shown, by evidence satisfactory to the Board, to have continued in life throughout such month. Where an annuity would accrue for months under section 228b(a) of this title for such individual and under section 228b(e) of this title for such individual's spouse, had he been shown to be alive during such months, he shall be deemed, for the purposes of benefits under section 228e of this title, to have died in the month in which he disappeared and to have been completely insured: *Provided, however*, That if he is later determined to have been alive during any of such months, recovery of any benefits paid on the basis of his compensation under section 228e of this title for the months in which he was not known to be alive, minus the total of the amounts that would have been paid as a spouse's annuity during such months (treating the application for a widow's annuity as an application for a spouse's annuity), shall be made in accordance with the provisions of section 228i of this title.

* * * * *

(i) If the amount of any annuity computed under this section (other than the proviso of subsection (e)), under section 228b of this title (other than a spouse's annuity payable in the maximum amount), and under section 228e of this title, does not, after any adjustment, end in a digit denoting 5 cents, it shall be raised so that it will end in such a digit. If the amount of any annuity under this subchapter (other than an annuity ending in a digit denoting 5 cents pursuant to the next preceding sentence) is not, after any adjustment, a multiple of $0.10, it shall be raised to the next higher multiple of $0.10.

(j)(1) An individual who is entitled to the payment of an annuity under section 228b of this title (other than subsection (e) or (h) thereof) and had a current connection with the railroad industry at the time such annuity began to accrue, shall be entitled to have a supplemental annuity accrue to him

[1] As enacted in section 1 of Pub. L. 93-58. Probably should read "section 202(w)(2)(B)(ii) of the Social Security Act [classified to section 402(w)(2)(B)(ii) of Title 42]".

for each month beginning with the month in which he has (i) attained the age of sixty-five and (ii) completed twenty-five or more years of service. The amount of the supplemental annuity shall be $45 plus an additional amount of $5 for each year of service that the individual has in excess of 25 years, but in no case shall the supplemental annuity exceed $70: *Provided, however,* That in cases where an individual's annuity under section 228b of this title begins to accrue on other than the first day of the month, the amount of any supplemental annuity to which he is entitled for that month shall be reduced by one-thirtieth for each day with respect to which he is not entitled to an annuity under section 228b of this title. The supplemental annuity provided by this subsection shall, with respect to any month, be subject to the same provisions of subsection (d) of section 228b of this title as the individual's annuity under such section 228b. Except as provided in subsection (a)(2) of this section, the supplemental annuity provided by this subsection shall not be taken into consideration in determining or computing any other annuity or benefit under this subchapter.

* * * * *

(4) Notwithstanding any other provision of this subchapter, no individual shall be entitled to a supplemental annuity provided by this subsection for any period after he renders any service as an employee for compensation after his supplemental annuity closing date determined as follows:

* * * * *

(As amended July 2, 1971, Pub. L. 92–46, § 1, 85 Stat. 101; Oct. 4, 1972, Pub. L. 92–460, § 1(a), (d), 86 Stat. 765; July 6, 1973, Pub. L. 93–58, § 1, 87 Stat. 141; July 10, 1973, Pub. L. 93–69, title I, § 104(a), 87 Stat. 163; Oct. 16, 1974, Pub. L. 93–445, title VI, § 601, 88 Stat. 1360.)

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

REFERENCES IN TEXT

Title II of the Social Security Act, referred to in subsecs. (a)(2), (3), (6) and (e) is Title II of act Aug. 14, 1935, ch. 531, 49 Stat. 622, as amended, which is classified to section 401 et seq. of Title 42, The Public Health and Welfare.

Social Security Act, referred to in subsecs. (a)(6) and (e), is classified to chapter 7 of Title 42, The Public Health and Welfare. Subchapter II of such chapter relates to Federal old-age and survivors insurance benefits.

AMENDMENTS

1974—Subsec. (a)(6). Pub. L. 93–445 added provision that if the individual entitled to an increase determined under the preceding provisions of subsec. (a)(6) is also entitled to a benefit for the same month under title II of the Social Security Act, there should be offset against the total of the increase, or increases, of such individual determined under the preceding provisions of subsec. (a)(6), any amount by which such individual's social security benefit was increased during the period July 1, 1974, through December 31, 1974, and that for purposes of approximating any such offsets, the Railroad Retirement Board is authorized to determine the percentage figure which, when applied against current social security benefits, will produce approximately the amount of the increase, or increases, in social security benefits during the period July 1, 1974, through December 31, 1974, with the amount produced by applying such percentage figure to the current social security benefit of an individual to be the amount utilized in making the offset prescribed by the provisions of subsec. (a)(6).

1973—Subsec. (a)(6). Pub. L. 93–69 added par. (6).

Subsec. (e). Pub. L. 93–58 inserted in the second par. cls. (xi) and (xii).

1972—Subsec. (a)(5). Pub. L. 92–460, § 1(a), added par. (5).

Subsec. (e). Pub. L. 92–460, § 1(d), inserted in the second par. cls. (vi) through (x) and struck out from the third par. ", or on application would be," preceeding the last word "entitled".

1971—Subsec. (a)(4). Pub. L. 92–46 added par. (4).

EFFECTIVE DATE OF 1974 AMENDMENT

Section 605 of Pub. L. 93–445 provided that: "The amendment made by section 601 of this Act [amending subsec. (a)(6) of this section] shall be effective on the enactment date of this Act [Oct. 16, 1974] and shall apply with respect to any increase in annuities under the Railroad Retirement Act of 1937 [this subchapter] which becomes effective after June 30, 1974."

EFFECTIVE DATE OF 1973 AMENDMENTS

Section 109(c) of Pub. L. 93–69 provided that: "The amendments made by sections 103 [amending note provisions under this section] and 104 [enacting subsec. (a)(6) of this section and section 228(e)(q) of this title and amending section 228b(e), (i) of this title] of this Act shall be effective on the enactment date of this Act [July 10, 1973]: *Provided, however,* That any increases in annuities or pensions resulting from the provisions of sections 104 [enacting subsec. (a)(6) of this section and section 228e(q) of this title and amending section 228(e), (i) of this title] and 105 [set out as a note under section 228f of this title] of this Act shall be effective on the same date or dates as the benefit increases under title II of the Social Security Act [section 401 et seq. of Title 42] which gave rise to such annuity or pension increases are effective."

Enactment of cl. (xi) in second par. of subsec. (e) by section 1 of Pub. L. 93–58 effective with respect to calendar years after 1971 for annuities accruing after Dec. 1972, and enactment of cl. (xii) in second par. of subsec. (e) by section 1 of Pub. L. 93–58 effective as of the date the delayed retirement provision of Pub. L. 92–603 is effective [section 402(w) of Title 42 applicable with respect to old-age insurance benefits payable under section 401 et seq. of Title 42 for months beginning after 1972], see section 4(a) of Pub. L. 93–58, set out as a note under section 228e of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 5(a) of Pub. L. 92–460 provided that: "The amendments made by this Act [enacting sections 228c(a)(5) and 228e(p) and amending section 228b(e), (i) of this title and enacting provisions set out as notes under such sections 228b, 228c, and 228e] except for subsections (d) and (e) of section 1 [amending sections 228c(e) and 228e(*l*)(1) of this title] shall be effective with respect to annuities accruing for months after August 1972 and with respect to pensions due in calendar months after September, 1972. The provisions of clauses (vi) through (x), which are added by section 1(d)(1) of this Act [to subsec. (e) of this section], and the provisions of section 1(d)(2) of this Act [amending subsec. (e) of this section], shall be effective as follows: clause (vi) [of subsec. (e) of this section] shall be effective with respect to annuities awarded after enactment of this Act [Oct. 4, 1972]; clauses (vii) and (viii) [of subsec. (e) of this section], and the provisions of section (1)(d)(2) [amending subsec. (e) of this section], shall be effective with respect to annuities awarded or recertified after the

enactment of this Act and clauses (ix) and (x) [of subsec. (e) of this section] shall be effective with respect to calendar years after 1971."

EFFECTIVE DATE OF 1971 AMENDMENT

Section 8(a) of Pub. L. 92–46 provided that: "The provisions of this Act [amending this section and sections 228b and 228e of this title and enacting provisions set out as notes under this section and sections 228e and 228j of this title] shall be effective with respect to annuities accruing for months after December 1970 and with respect to pensions due in calendar months after January 1971; except that increases in benefits for months prior to the month of enactment of this Act [July 1971] shall be payable only to an individual who is entitled to an annuity or pension for the month of enactment [July 1971], or who becomes so entitled in later months, on the basis of the same earnings record."

TERMINATION DATE OF 1972 AMENDMENT

Section 5(b) of Pub. L. 92–460, as amended by Pub. L. 93–69, title I, § 103(c), provided that: "The first three sections of this Act, except for subsections (d) and (e) of section 1 [amending sections 228c(e) and 228e(*l*)(1) of this title], and the amendments made by such sections [enacting sections 228c(a)(5) and 228e(p) and amending section 228b(e)(1) of this title and enacting provisions set out as notes under sections 228b and 228e of this title] shall cease to apply as of the close of December 31, 1974. Annuities accruing for months after December 31, 1974, and pensions due in calendar months after December 31, 1974, shall be computed as if the first three sections of this Act, except for subsections (d) and (e) of section 1, and the amendments made by such sections, had not been enacted.

TERMINATION DATE OF 1971 AMENDMENT

Section 8(b) of Pub. L. 92–46, as amended by Pub. L. 93–69, title I, § 103(b), provided that: "The first six sections of this Act, and the amendments made by such sections [enacting subsec. (a)(4) of this section and section 228e (o) of this title, amending section 228b (e), (l) of this title, and enacting provisions set out as notes under this section and section 228e of this title] (other than the amendments made by subsections (a)(2), (b)(2), and (c) of section 2) [amending section 228b of this title, inserting in: subsec. (e) "(before any reduction on account of age)" in par. increasing spouse's annuity 15 per centum; subsec. (i) "or in that part of section 228c (e) of this title preceding the first proviso, or of the pension."; and subsec. (j) reference to award of an annuity under section 228e (a) of this title], shall cease to apply as of the close of December 31, 1974. Annuities accruing for months after December 31, 1974, and pensions due in calendar months after December 31, 1974, shall be computed as if the first six sections of this Act, and the amendments made by such sections (other than the amendments made by subsections (a)(2), (b)(2), and (c) of section 2), had not been enacted."

TERMINATION DATE OF 1970 AMENDMENT

Section 6 of Pub. L. 91–377, as amended by Pub. L. 92–46, § 8(c); Pub. L. 93–69, title I, § 103(a), provided that: "The first four sections of this Act, and the amendments made by such sections [amending this section and sections 228b and 228e of this title, and enacting provisions set out as notes under this section and section 228e of this title], shall cease to apply as of the close of December 31, 1974. Annuities accruing for months after December 31, 1974, and pensions due in calendar months after December 31, 1974, shall be computed as if the first four sections of this Act, and the amendment made thereby, had not been enacted."

PERCENTAGE ADJUSTMENT

Section 4 of Pub. L. 92–460 provided that: "For the purposes of approximating the offsets in railroad retirement benefits for increases in social security benefits by reason of amendments prior to the Social Security Amendments of 1971 [Pub. L. 92–5, Mar. 17, 1971] the Railroad Retirement Board is authorized to prescribe adjustments in the percentages in the Railroad Retirement Act of 1937 [this subchapter] and laws pertaining thereto in order that these percentages, when applied against current social security benefits not in excess of the primary insurance amount applicable for an average monthly wage of $650, will produce approximately the same amounts as those computed under the law in effect, except for changes in the wage base, before the Social Security Amendments of 1971 [Pub. L. 92–5, Mar. 17, 1971] were enacted."

Section 4 of Pub. L. 92–46 provided that: "For the purposes of approximating the offsets in railroad retirement benefits for increases in social security benefits by reason of amendments prior to the Social Security Amendments of 1971 [Pub. L. 92–5, Mar. 17, 1971], the Railroad Retirement Board is authorized to prescribe adjustments in the percentages in the Railroad Retirement Act of 1937 [this subchapter] and laws pertaining thereto, in order that these percentages, when applied against current social security benefits not in excess of $275.80 a month, will produce approximately the same amounts as those computed under the law in effect, except for changes in the wage base, before the Social Security Amendments of 1971 [Pub. L. 92–5, Mar. 17, 1971] were enacted."

RECERTIFICATIONS

Section 106 of Pub. L. 93–69 provided that: "All recertifications required by reason of the amendments made by sections 104 [enacting subsec. (a)(6) of this section and section 228e(q) of this title and amending section 228b(e) and (l) of this title] and 105 [set out as a note under section 228f of this title] of this Act shall be made by the Railroad Retirement Board without application therefor."

All recertifications required by reason of the amendments made by Pub. L. 92–460 to be made by the Railroad Retirement Board without application therefor, see section 3 of Pub. L. 92–460, set out as a note under section 228b of this title.

Section 6 of Pub. L. 92–46 provided that: "All recertifications required by reason of the amendments made by this Act [amending this section and sections 228b and 228e of this title and provisions set out as notes under this section and section 228j of this title] shall be made by the Railroad Retirement Board without application therefor."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 228a, 228b, 228c–1, 228e, 228o, 228s–1, 228s–2, 228s–3, 231a to 231c of this title; title 26 section 3221.

§ 228c–1. Military service.

* * * * *

(f) Military service shall not be included in the years of service of an individual unless, prior to the beginning of his military service in a war service period and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable under this subchapter, or lost time as an employee for which he received remuneration, or was serving as an employee representative.

* * * * *

(h) In the event military service is or has been used as the basis or as a partial basis for a pension, disability compensation, or any other gratuitous benefits payable on a periodic basis under any other Act of Congress, any annuity under this subchapter or the Railroad Retirement Act of 1935, which is based in part on such military service and is with respect to a calendar month for all or part of which such pension or other benefit is also payable, shall be reduced with respect to that month by the proportion which the number of years of service by

which such military service increases the years of service, or the service period, as the case may be, bears to the total years of service, or by the aggregate amount of such pension or other benefit with respect to that month, whichever would result in the smaller reduction.

* * * * *

(k) An individual who, before the ninety-first day after Apr. 8, 1942, was awarded an annuity under this subchapter or the Railroad Retirement Act of 1935, but who had rendered military service which, if credited, would have resulted in an increase in his annuity, may, notwithstanding the previous award, of an annuity, file with the Board an application for an increase in such annity [1] based on his military service. Upon the filing of such application, if the Board finds that the military service thus claimed is creditable and would result in an increase in the annuity, the Board, notwithstanding the previous award, shall recertify the annuity on an increased basis in the same manner as though the provisions making military service creditable had been in effect at the time of the original certification subject, however, to the provisions of subsection (j) of this section. If the annuity previously awarded is a joint and survivor annuity, the increased annuity shall be a joint and survivor annuity of the same type, the actuarial value of the increase to be computed as of the effective date of the increase: *Provided, however,* That if on the date the increase begins to accrue the individual has no spouse for whom the election of the joint and survivor annuity was made, the increase on a single life basis shall be added to the individual's annuity.

(*l*) In addition to the amount authorized to be appropriated in subsection (a) of section 228o of this title, there is hereby authorized to be appropriated to the Railroad Retirement Account for each fiscal year, beginning with the fiscal year ending June 30, 1941, (1) an amount sufficient to meet the additional cost of crediting military service rendered prior to Jan. 1, 1937, and after June 30, 1963, and (2) an amount found by the Board to be equal to the amount of the total additional excise and income taxes which would have been payable during the preceding fiscal year under Subchapter B of Chapter 9 of the Internal Revenue Code of 1939, as amended, with respect to the compensation, as defined in such Subchapter B, of all individuals entitled to credit under the Railroad Retirement Acts, as amended, for military service after Dec. 31, 1936, and prior to Jan. 1, 1957, if each of such individuals, in addition to compensation actually earned, had earned such compensation in the amount of $160 in each calendar month in which he was in such military service during such preceding fiscal year and such taxes were measured by all such compensation without limitation as to amount earned by any individual in any one calendar month, and (3) an amount found by the Board to be equal to (A) the amount of the total additional excise and income taxes which would have been payable during the preceding fiscal year under chapter 22 of title 26 with respect to the compensation, as defined in such chapter, of all individuals entitled (without regard to subsection (n)(1) of this section) to credit under this subchapter for military service after Dec. 31, 1956, and before July 1, 1963, if each of such individuals, in addition to compensation actually paid, had been paid such compensation in the amount of $160 in each calendar month in which he was in such military service during such preceding fiscal year and such taxes were measured by all such compensation without limitation as to amount paid to any individual in any one calendar month, less (B) the amount of the taxes which were paid with respect to such military service under sections 3101 and 3111 of title 26. The additional cost of crediting military service rendered prior to Jan. 1, 1937, and after June 30, 1963, shall be determined as follows: (i) determine the difference between the actuarial value of the benefit payable under this subchapter based in part on military service and the actuarial value of the benefit which would be payable to the same individual without regard to military service; (ii) with respect to military service rendered after June 30, 1963, adjust such difference by applying thereto the ratio of the total net level cost of all benefits under this subchapter to the portion thereof remaining after the exclusion of administrative expenses and interest charges on the unfunded accrued liability after taking into account the effects of section 228e(k)(2) of this title; and (iii) subtract the actuarial value of such benefit based on the individual's military service as is includible in determinations made pursuant to section 228e(k)(2) of this title. In calculating these actuarial values, the Board shall use such mortality tables and actuarial factors as it finds appropriate; the ratio referred to in clause (ii) of the preceding sentence shall be determined from time to time by the Board on the basis of actuarial estimates made in accordance with section 228o of this title; and all actuarial values shall be calculated as of the date on which the benefit based on military service begins to accrue and shall not thereafter be subject to change. All actuarial calculations in this subsection shall take into account interest at the rate used in the actuarial estimates referred to in the preceding sentence. The Railroad Retirement Board, as promptly as practicable after Apr. 8, 1942, and thereafter annually, shall submit to the Bureau of the Budget estimates of such military service appropriations to be made to the account, in addition to the annual estimate by the Board, in accordance with subsection (a) of section 228o of this title, of the appropriation to be made to the account to provide for the payment of annuities, pensions and death benefits not based on military service. The estimate made in any year with respect to military service rendered prior to Jan. 1, 1937, and after June 30, 1963, shall be based on the cost, as determined in accordance with the above provisions, of annuities awarded or increased on the basis of such military service up to the close of the preceding fiscal year and not previously appropriated for, and shall take into account interest from the date the annuity began to accrue or was increased to the date

[1] So in original.

or dates on which the amount appropriated is to be credited to the Railroad Retirement Account. In making the estimate for the appropriation for military service rendered after Dec. 31, 1936, the Board shall take into account any excess or deficiency in the appropriation or appropriations for such service in any preceding fiscal year or years, with interest thereon. In determining pursuant to section 228e(k)(2) of this title for any fiscal year the total amount to be credited from the Railroad Retirement Account to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, credit shall be given such account for the amount of the taxes described in clause (3)(B) of the first sentence of this subsection and the amount of such taxes with respect to military service after June 30, 1963. The amount authorized to be appropriated to the Railroad Retirement Account pursuant to clause (2) of the first sentence of this subsection shall be reduced by the amounts credited to such account pursuant to section 228e(k)(2) of this title for military service rendered before Jan. 1, 1957, and the amounts so credited shall be considered as additional costs within the meaning of section 417(g) of title 42. In any determination made pursuant to section 228e(k)(2) of this title, no further charges shall be made against the Trust Funds established by title II of the Social Security Act for military service rendered before Jan. 1, 1957, and with respect to which appropriations authorized by clause (2) of the first sentence of this subsection shall have been credited to the Railroad Retirement Account, but the additional benefit payments incurred by such Trust Funds by reason of such military service shall be taken into account in making any such determination.

* * * * *

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93-445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

REFERENCES IN TEXT

Section 202 of act June 24, 1937, ch. 382, referred to in subsecs. (b) and (c), is set out under former sections 215–228 of this title in note relating to continuation and effect of Railroad Retirement Act of 1935.

The Railroad Retirement Act of 1935, referred to in subsecs. (h) and (k), was formerly classified to sections 215–228 of this title, and is set out as a note under the former sections.

Subchapter B of chapter 9 of the Internal Revenue Code of 1939, as amended, referred to in subsec. (*l*), was repealed by section 7851 of Title 26, I.R.C. 1954, and is covered by chapter 22 of Title 26, Internal Revenue Code of 1954.

For provision deeming a reference in other laws to a provision of I.R.C. 1939, also as a reference to corresponding provision of I. R. C. 1954, see section 7852 (b) of Title 26.

The Railroad Retirement Acts, as amended, referred to in subsec. (*l*), refers to the Railroad Retirement Act of 1935, which was formerly classified to sections 215–228 of this title, and is set out as a note thereunder, and to the Railroad Retirement Act of 1937, which is classified to this subchapter.

Title II of the Social Security Act, referred to in subsecs. (*l*) and (o), is classified to sections 401 et seq. of Title 42, The Public Health and Welfare.

Section 102(9) of the Servicemen's and Veterans' Survivor Benefits Act, referred to in subsec. (p), was classified to section 1101(9) of former Title 38, Pensions, Bonuses and Veteran's Relief. See section 101(25) of Title 38, Veterans' Benefits.

CODIFICATION

Subsecs. (f), (h), (k) and (*l*) are set out in this supplement to correct translations therein.

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of 1970 Reorg. Plan No. 2, eff. July 1, 1970. 35 F.R. 7959, 84 Stat. 2085. Section 102 of 1970 Reorg. Plan No. 2 redesignated the Bureau of the Budget as the Office of Management and Budget and the offices of Director of the Bureau of the Budget, Deputy Director of the Bureau of the Budget, and Assistant Directors of the Bureau of the Budget as Director of the Office of Management and Budget, Deputy Director of the Office of Management and Budget, and Assistant Directors of the Office of Management and Budget, respectively. Section 103 of 1970 Reorg. Plan No. 2 transferred all records, property, personnel, and funds of the Bureau to the Office of Management and Budget. See 1970 Reorg. Plan No. 2 set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 228a, 228e, 231n of this title.

§ 228e. Annuities and lump sums for survivors.

* * * * *

(f) Lump-sum payment.

* * * * *

(2) Whenever it shall appear, with respect to the death of an employee on or after Jan. 1, 1947, that no benefits, or no further benefits, other than benefits payable to a widow, widower, or parent upon attaining age sixty at a future date, will be payable under this section or, pursuant to subsection (k) of this section, upon attaining the age of eligibility at a future date, will be payable under title II of the Social Security Act, there shall be paid to such person or persons as the deceased employee may have designated by a writing filed with the Board prior to his or her death, or if there be no designation, to the following person (or, if more than one, in equal shares to the persons) whose relationship to the deceased employee will have been determined by the Board and who will not have died before receiving payment of the lump sum provided for in this paragraph:

(i) the widow or widower of the deceased employee who was living with such employee at the time of such employee's death; or

(ii) if there be no such widow or widower, to any child or children of such employee; or

(iii) if there be no such widow, widower, or child, to any grandchild or grandchildren of such employee; or

(iv) if there be no such widow, widower, child, or grandchild, to any parent or parents of such employee; or

(v) if there be no such widow, widower, child, grandchild, or parent, to any brother or sister of such employee; or

(vi) if there be no such widow, widower, child, grandchild, parent, brother, or sister, to the estate of such employee.

a lump sum in an amount equal to the sum of 4 per centum of his compensation paid after Dec. 31, 1936, and prior to Jan. 1, 1947, plus 7 per centum of his or her compensation paid after Dec. 31, 1946, and before Jan. 1, 1959, plus 7½ per centum of his or her compensation paid after Dec. 31, 1958, and before Jan. 1, 1962, plus 8 per centum of his or her compensation paid after Dec. 31, 1961 and before Jan. 1, 1966, plus an amount equal to the total of all employee taxes payable by him or her after Dec. 31, 1965, under the provisions of section 3201 of Title 26, plus one-half of 1 per centum of the compensation on which such taxes are payable, deeming the compensation attributable to creditable military service rendered after June 30, 1963, to be taxable compensation, and one-half of the taxes payable by an employee representative under section 3211 of title 26 to be employee taxes payable under section 3201 of title 26 (exclusive of compensation in excess of $300 for any month before July 1, 1954, and in excess of $350 for any month after June 30, 1954, and before June 1, 1959, and in excess of $400 for any month after May 31, 1959, and before Nov. 1, 1963, and in excess of $450 for any month after Oct. 31, 1963, and before Oct. 1, 1965, and in excess over (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of title 26, whichever is greater, for any month after Sept. 30, 1965), minus the sum of all benefits paid to him or her, and to others deriving from him or her, during his or her life, or to others by reason of his or her death, under this subchapter and, pursuant to subsection (k) of this section, under title II of the Social Security Act (for this purpose, payments to providers of services under section 228s of this title and the amount of the employee tax attributable to so much in tax rate as is derived from section 3101(b) of title 26, shall be disregarded: *Provided, however,* That if the employee is survived by a widow, widower, or parent who may upon attaining age sixty be entitled to further benefits under this section, or pursuant to subsection (k) of this section, upon attaining the age of eligibility be entitled to further benefits under title II of the Social Security Act, such lump sum shall not be paid unless such widow, widower, or parent makes and files with the Board an irrevocable election, in such form as the Board may prescribe, to have such lump sum paid in lieu of all benefits to which such widow, widower, or parent might otherwise become entitled under this section or, pursuant to subsection (k) of this section, under title II of the Social Security Act. Such election shall be legally effective according to its terms. Nothing in this section shall operate to deprive a widow, widower, or parent making such election of any insurance benefits under title II of the Social Security Act, to which such widow, widower, or parent would have been entitled had this section not been enacted. The term "benefits" as used in this paragraph includes all annuities payable under this subchapter, lump sums payable under paragraph (1) of this subsection, and insurance benefits and lump-sum payments under title II of the Social Security Act, pursuant to subsection (k) of this section, except that the deductions of the benefits which, pursuant to subsection (k) (1) of this section, are paid under title II of the Social Security Act, during the life of the employee to him or to her and to others deriving from him or her shall be limited to such portions of such benefits as are payable solely by reason of the inclusion of service as an employee in "employment" pursuant to subsection (k) (1) of this section.

* * * * *

(j) When annuities begin and end.

No individual shall be entitled to receive an annuity under this section for any month before Jan. 1, 1947. An application for any payment under this section shall be made and filed in such manner and form as the Board prescribes. An annuity under this section for an individual otherwise entitled thereto shall begin with the month in which eligibility therefore was otherwise acquired, but not earlier than the first day of the twelfth month before the month in which the application was filed. No application for an annuity under this section filed prior to three months before the first month for which the applicant becomes otherwise entitled to receive such annuity shall be accepted. No annuity shall be payable for the month in which the recipient thereof ceases to be qualified therefor: *Provided, however,* That the annuity of a child, qualified under subsection (*l*) (1) (ii) (C) of this section, shall cease upon the last day of the second month following the month in which he ceases to be unable to engage in any regular employment by reason of a permanent physical or mental condition unless in such second month he qualifies for an annuity under one of the other provisions of this subchapter and unless his annuity is otherwise terminated on an earlier date.

(k) Crediting railroad industry service under Social Security Act in certain cases; adjustment of funds.

* * * * *

(3) The Board and the Secretary of Health, Education, and Welfare shall, upon request, supply each other with certified reports of records of compensation or wages and periods of service, of determinations under section 228c (e) of this title, or section 416 (i) of Title 42, of periods of disability within the meaning of such section 416 (i) of Title 42, and of other records in their possession or which they may secure, pertinent to the administration of this section, section 228c (e) of this title, or title II of the Social Security Act as affected by paragraph (1) of this subsection. Such certified reports shall be conclusive in adjudication as to the matters covered therein (except in the case of a determination of disability under section 416 (i) of Title 42): *Provided,* That if the Board or the Secretary of Health, Education, and Welfare receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence, such recertification of

such report shall be made as, in the judgment of the Board or the Secretary of Health, Education, and Welfare, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

(l) **Definitions.**

For the purposes of this section the term "employee" includes an individual who will have been an "employee", and—

(1) The qualifications for "widow", "widower", "child", and "parent" shall be, except for the purposes of subsection (f) of this section, those set forth in section 416(c), (e), (g), and (k), and section 402(h)(3) of Title 42, respectively; and in addition—

* * * * *

(ii) a "child" shall have been dependent upon its parent employee at the time of his death; and—

* * * * *

(C) shall without regard to his age, be unable to engage in any regular employment by reason of a permanent physical or mental condition which disability began before he attained age twenty-two or before the close of the eighty-fourth month following the month in which his most recent entitlement to an annuity under subsection (c) of this section terminated because he ceased to be under such a disability, and

* * * * *

A "widow" or "widower" shall be deemed to have been living with the employee if the conditions set forth in section 416(h)(2) or (3), whichever is applicable, of Title 42, as in effect prior to 1957, are fulfilled, or if such widow or widower would be paid benefits, as such, under title II of the Social Security Act but for the fact that the employee died insured under this subchapter. A "child" shall be deemed to have been dependent upon a parent if the conditions set forth in section 402(d)(3), (4), or (9) of Title 42 are fulfilled (a partially insured mother being deemed currently insured). In determining, for purposes of this section and subsection (f) of section 228b and subsection (f) of section 228c of this title whether an applicant is the wife, husband, widow, widower, child, or parent of an employee as claimed, the rules set forth in section 416(h) of Title 42 shall be applied deeming, for this purpose, individuals entitled to an annuity under section 228b (e) or (h) of this title to be entitled to benefits under subsection (b) or (c) of section 402 of Title 42 and individuals entitled to an annuity under subsection (a) or (b) of this section to be entitled to a benefit under subsection (e), (f), or (g) of section 402 of Title 42. In determining for purposes of this section and subsection (f) of section 228c of this title whether an applicant is the grandchild, brother, or sister of an employee as claimed, the rules set forth in section 416(h)(1) of Title 42, as in effect prior to 1957, shall be applied the same as if such persons were included in such section 416(h)(1). Such satisfactory proof shall be made from time to time, as prescribed by the Board, of the disability provided in clause (ii) of this paragraph and of the continuance, in accordance with regulations prescribed by the Board, of such disability. If the individual fails to comply with the requirements prescribed by the Board as to the proof of the continuance of the disability his right to an annuity shall, except for good cause shown to the Board, cease. A child whose entitlement to an annuity under subsection (c) of this section was terminated because he ceased to be disabled as provided in clause (ii) of this paragraph and who becomes again disabled as provided in such clause (ii), may become reentitled to an annuity on the basis of such disability upon his application for such reentitlement. Where a woman has qualified for an annuity under this section as a widow, and marries another employee who dies within one year after the marriage, she shall not be disqualified for annuity under this section as the widow of the second employee by reason of not having been married to the employee for one year. The provisions of paragraph (7) of section 402(d) of Title 42 (defining the terms "full-time student" and "educational institution") shall be applied by the Board in the administration of this section as if the references therein to the Secretary were references to the Board. For purposes of the last sentence of subsection (j) of this section, a child entitled to a child's insurance annuity only on the basis of being a full-time student described in clause (ii)(B) of this paragraph shall cease to be qualified therefor in the first month during no part of which he is a full-time student, or the month in which he attains age 22, whichever first occurs. A child whose entitlement to a child's insurance annuity, on the basis of the compensation of an insured individual, terminated with the month preceding the month in which such child attained age eighteen, or with a subsequent month, may again become entitled to such an annuity (providing no event to disqualify the child has occurred beginning with the first month thereafter in which he is a full-time student and has not attained the age of twenty-two, if he has filed an application for such reenlistment.

A child who attains age twenty-two at a time when he is a full-time student (as defined in subparagraph (A) of paragraph 7 of section 402(d) of Title 42 and without the application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a degree from a four-year college or university shall be deemed (for purposes of determining whether his entitlement to an annuity under this section has terminated under subsection (j) of this section and for purposes of determining his initial entitlement to such an annuity) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the educational institution in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).

* * * * *

(o) Increase in annuities.

The annuity computed under the preceding provisions of this section shall be increased by 10 per centum.

(p) Increase in annuities.

A survivor's annuity computed under the preceding provisions of this section (except an annuity in the amount determined under the proviso in subsection (a) or (b) of this section) shall (before any reduction on account of age) be increased by 20 per centum.

(q) Increase in annuities.

A survivor's annuity computed under the preceding provisions of this section shall be increased in an amount determined by the method of computing increases set forth in subsection (a)(6) of section 228c of this title: *Provided, however,* That in computing such an amount for an individual entitled to an annuity under subsection (a)(2) of this section, the 90.75 per centum figure appearing in the third paragraph of section 228c(e) of this title shall be deemed to be 82.5 per centum. (As amended July 2, 1971, Pub. L. 92–46, § 3, 85 Stat. 101; Oct. 4, 1972, Pub. L. 92–460, § 1 (e), (f), 86 Stat. 766; July 6, 1973, Pub. L. 93–58, § 2, 87 Stat. 141; July 10, 1973, Pub. L. 93–69, title I, § 104(d), 87 Stat. 164.)

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Subsec. (k)(3) was inadvertently omitted in the 1970 edition.

AMENDMENTS

1973—Subsec. (*l*)(1), first par., cl. (ii). Pub. L. 93–58, § 2(1), struck from introductory text "shall not be adopted after such death by other than a stepparent, grandparent, aunt, uncle, brother, or sister;" following "time of his death;".

Subsec. (*l*)(1), first par. cl. (ii)(C). Pub. L. 93–58, § 2(2), substituted "age twenty-two or before the close of the eighty-fourth month following the month in which his most recent entitlement to an annuity under subsection (c) of this section terminated because he ceased to be under such a disability" for "age eighteen".

Subsec. (*l*)(1), first par. following cl. (iii). Pub. L. 93–58, § 2(3), (4), inserted in third sentence reference to section 402(d)(9) of Title 42 and added after seventh sentence reading "If the individual . . ." provision for reentitlement to an annuity after again becoming disabled.

Subsec. (*l*)(1), second par. Pub. L. 93–58, § 2(5), added second par.

Subsec. (q). Pub. L. 93–69 added subsec. (q).

1972—Subsec. (*l*)(1). Pub. L. 92–460, § 1(e), inserted reference to section 416(k) of Title 42.

Subsec. (p). Pub. L. 92–460, § 1(f), added subsec. (p).

1971—Subsec. (o). Pub. L. 92–46 added subsec. (*o*).

EFFECTIVE DATE OF 1973 AMENDMENTS

Section 4(a) of Pub. L. 93–58 provided that: "The provisions of this Act [amending subsec. (*l*)(1) of this section and section 426 (e)(2)(A)–(D) of Title 42], except the provisions of section 1, shall be effective as of the date the corresponding provisions of Public Law 92–603 are effective as follows: clause (xi) [section 228c(e)(xi) of Title 42] effective with respect to services provided on and after July 1, 1973. The provisions of clauses (xi) and (xii), which are added by section 1 of this Act, shall be effective as follows: clause (xi) [section 228c (e)(xi) of this title] shall be effective with respect to calendar years after 1971 for annuities accruing after December 1972; and clause (xii) [section 228c(e)(xii) of this title] shall be effective as of the date the delayed retirement provision of Public Law 92–603 is effective [section 402(w) of Title 42 applicable with respect to old-age insurance benefits payable under section 401 et seq. of Title 42 for months beginning after 1972]."

Enactment of subsec. (q) of this section by Pub. L. 93–69 effective July 10, 1973, except that any increases in annuities or pensions resulting from such enactment shall be effective on the same date as the benefit increases under section 401 et seq. of Title 42 which gave rise to such annuity or pension increases are effective, see section 109(c) of Pub. L. 93–69, set out as a note under section 228c of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–460 effective with respect to annuities accruing for months after August, 1972 and with respect to pensions due in calendar months after September, 1972, see section 5(a) of Pub. L. 92–460, set out as a note under section 228c of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–46 effective with respect to annuities accruing for months after December 1970 and with respect to pensions due in calendar months after January 1971, except that increases in benefits for months prior to July 1971 shall be payable only to an individual entitled to an annuity or pension for July 1971, or who becomes so entitled in later months, on basis of same earnings record, see section 8(a) of Pub. L. 92–46, set out as a note under section 228c of this title.

TERMINATION DATE OF 1972 AMENDMENT

Enactment of subsec. (p) and provisions set out as a note under this section by sections 1(f) and 2 of Pub. L. 92–460 to cease to apply as of the close of December 31, 1974, and annuities accruing for months after December 31, 1974, and pensions due in calendar months after December 31, 1974, to be computed as if such amendment had not been made, see section 5(b) of Pub. L. 92–460, set out as a note under section 228c of this title.

TERMINATION DATE OF 1971 AMENDMENT

Enactment of subsec. (o) and provisions set out as a note by sections 3 and 5 of Pub. L. 92–46 to cease to apply as of close of December 31, 1974, and computation of pensions due in calendar months after December 31, 1974, as if such enactment had not been made, see section 8(b) of Pub. L. 92–46, set out as a note under section 228c of this title.

TERMINATION DATE OF 1970 AMENDMENT

Amendment of section by Pub. L. 91–377 and provisions enacted as notes under this section by Pub. L. 91–377 to cease to apply as of the close of December 31, 1974, and annuities accruing for months after December 31, 1974, and pensions due in calendar months after December 31, 1974, to be computed as if such amendment and enactments had not been made, see section 6 of Pub. L. 91–377, as amended, set out as a note under section 228c of this title.

ADOPTED CHILD'S REENLISTMENT TO ANNUITY

Section 4(b) of Pub. L. 93–58 provided that: "Any child (1) whose entitlement to an annuity under section 5(c) of the Railroad Retirement Act [subsec. (c) of this section] was terminated by reason of his adoption prior to the enactment of this Act [July 6, 1973], and (2) who, except for such adoption, would be entitled to an annuity under such section for a month after the month in which this Act is enacted [July 1973], may, upon filing application for an annuity under the Railroad Retirement Act [this subchapter] after the date of enactment of this Act [July 6, 1973], become reentitled to such annuity; except that no child shall, by reason of the enactment of this Act [amending subsec. (*l*)(1) of this section, section 228c (e) of this title, and section 426 (e)(A)–(D) of Title 42], become reentitled to such annuity for any month prior to

the effective date of the relevant amendments made by this Act to section 5(*l*)(1)(ii) of the Railroad Retirement Act [subsec. (*l*)(1)(ii) of this section]."

INCREASES IN CERTAIN PENSIONS, JOINT AND SURVIVOR ANNUITIES, AND WIDOWS' AND WIDOWERS' INSURANCE ANNUITIES

Section 2 of Pub. L. 92–460 provided that:

"(a) All pensions under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title], all annuities under the Railroad Retirement Act of 1935 [former subchapter II of this chapter], and all survivor annuity to which the widow or widower was entitled, under the Railroad Retirement Act of 1937 [this subchapter] shall be increased by 20 per centum.

"(b) All such widows' and widowers' insurance annuities which are payable in the amount of the spouse's annuity to which the widow or widower was entitled, shall, in cases where the employee died prior to October 1, 1972, be increased by 20 per centum.

"(c) All such joint and survivor annuities shall be computed under section 3(a) of the Railroad Retirement Act of 1937 [section 228c(a) of this title] and shall be reduced by the percentage determined in accordance with the election of such annuity."

Section 5 of Pub. L. 92–46 provided that: "All pensions under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title], and all annuities under the Railroad Retirement Act of 1935, shall be increased by 10 per centum. All survivors annuities deriving from joint and survivor annuities under the Railroad Retirement Act of 1937 [this subchapter] and all widows' and widowers' insurance annuities which are payable in the amount of the spouse's annuity to which the widow or widower was entitled shall, in cases where the employee died in or before the month in which the increases in annuities provided in section 2 of this Act [amending section 228b of this title] are effective, be increased by 10 per centum. Joint and survivor annuities shall be computed under section 3(a) of the Railroad Retirement Act of 1937 [section 228c(a) of this title] and shall be reduced by the percentage determined in accordance with the election of such annuity."

PERMANENCY OF ANNUITY INCREASES FOR RAILROAD RETIREMENT BENEFICIARIES DEPENDENT ON REVENUES TO INSURE SOLVENCY OF RAILROAD RETIREMENT ACCOUNT; REPORTS TO CONGRESSIONAL COMMITTEES.

Section 6 of Pub. L. 92–460 provided that: "It is the policy of the Congress of the United States that the 20-percent increase in annuities of Railroad Retirement beneficiaries provided by this Act [which is classified to sections 228b(e), (l), 228c(a)(5), (e), and 228e (*l*)(1) and (p) of this title and provisions set out as notes under sections 228b, 228c, and 228e of this title], as well as the 10-percent and 15-percent increases provided by Public Law 92–46 and Public Law 91–377 [see Distribution Tables for classification in the Code of Pub. L. 92–46 and Pub. L. 91–37], respectively, all of which will expire by the terms of such Acts on June 30, 1973, can be made permanent only if at the same time a method is adopted to insure the receipt of sufficient revenues by the Railroad Retirement Account to make such Account financially solvent based on sound actuarial projections. Accordingly, representatives of employees and retirees and representatives of carriers shall, no later than March 1, 1973, submit to the Senate Committee on Labor and Public Welfare and the House of Representatives Committee on Interstate and Foreign Commerce a report containing the mutual recommendations of such representatives based upon their negotiations and taking into account the report and specific recommendations of the Commission on Railroad Retirement designed to insure such solvency. A copy of the report of such representatives shall also be submitted to the Railroad Retirement Board, which, no later than April 1, 1973, shall submit to such committees of the Congress a report containing its views and specific recommendations, and those of the administration, with reference to the report submitted by such representatives."

RECERTIFICATIONS

All recertifications required by reason of the amendment made by section 104 of Pub. L. 93–69, enacting subsec. (q) of this section and amending section 228b(e) and (l) of this title, to be made by the Railroad Retirement Board without application therefor, see section 106 of Pub. L. 93–69, set out as a note under section 228c of this title.

All recertifications required by reason of the amendments made by Pub. L. 92–460 to be made by the Railroad Retirement Board without application therefor, see section 3 of Pub. L. 92–460, set out as a note under section 228b of this title.

Recertifications required by reason of amendments made by Pub. L. 92–46 to be made by Railroad Retirement Board without application therefor, see section 6 of Pub. L. 92–46, set out as a note under section 228c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 228a, 228b, 228c, 228c–1, 228s–1, 228s–3, 228z–1, 231c, 231e of this title.

§ 228f. Pensions to individuals on pension or gratuity rolls of employers.

* * * * *

(b) No individual covered by this section who was on July 1, 1937, eligible for an annuity under this subchapter or the Railroad Retirement Act of 1935, based in whole or in part on service rendered prior to January 1, 1937, shall receive a pension payment under this section subsequent to the payment due on October 1, 1937, or due on the 1st day of the month in which the application for an annuity of such individual has been awarded and certified by the Board, whichever of the two dates is earlier. The annuity claims of such individuals who receive pension payments under this section shall be adjudicated in the same manner and with the same effect as if no pension payments had been made: *Provided, however*, That no such individual shall be entitled to receive both a pension under this section and an annuity under this subchapter or the Railroad Retirement Act of 1935, and in the event pension payments have been made to any such individual in any month in which such individual is entitled to an annuity under this subchapter or the Railroad Retirement Act of 1935, the difference between the amounts paid as pensions and the amounts due as annuities shall be adjusted in accordance with such rules and regulations as the Board may deem just and reasonable.

* * * * *

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Subsec. (b) of this section is set out in this supplement to correct translations therein.

BENEFIT INCREASES

Pub. L. 93–69, title I, § 105, July 10, 1973, 87 Stat. 164 provided that: "If title II of the Social Security Act [section 401 et seq. of Title 42] is amended to provide an increase in benefits payable thereunder at any time during the period July 1, 1973, through December 31, 1974, the pension of each individual under section 6 of the Railroad Retirement Act of 1937 [this section] and the annuity of each individual under the Railroad Retirement Act of 1935 [former subchapter II of this chapter] shall be increased

in an amount determined by the method of computing increases set forth in subsection (a) of section 104 of this Act [section 228c(a)(6) of this title], deeming for this purpose the average monthly earnings (in the case of a pension) or the average monthly compensation (in the case of an annuity under the Railroad Retirement Act of 1935 [former subchapter II of this chapter]) which would be used to compute the basic amount if the individual were to die to be the average monthly wage."

Any increases in annuities or pensions resulting from the provisions of section 105 of Pub. L. 93–69 effective on the same date as the benefit increases under section 401 et seq. of Title 42 which gave rise to such annuity or pension increases are effective, see section 109(c) of Pub. L. 93–69, set out as a note under section 228c of this title.

All recertifications required by reason of the amendment made by section 105 of Pub. L. 93–69 to be made by the Railroad Retirement Board without application therefor, see section 106 of Pub. L. 93–69, set out as a note under section 228c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 228a, 228b, 228s–2, 228z, 228z–1, 231 of this title.

§ 228g. Additional pensions or gratuities by employers.

Nothing in this subchapter or the Railroad Retirement Act of 1935, shall be taken as restricting or discouraging payment by employers to retired employees of pensions or gratuities in addition to the annuities or pensions paid to such employees under this subchapter or such act, nor shall this subchapter or such act be taken as terminating any trust heretofore created for the payment of such pensions or gratuities. (Aug. 29, 1935, ch. 812, § 7, 49 Stat. 971; June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 313.)

CODIFICATION

Section is set out in this supplement to correct translations therein.

§ 228h. Returns of compensation; conclusiveness.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 228a, 228c, 228e of this title.

§ 228i. Erroneous payments; adjustment; recovery; liability of officers.

(a) If the Board finds that at any time more than the correct amount of annuities, pensions, or death benefits has been paid to any individual under this subchapter or the Railroad Retirement Act of 1935 or a payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940), recovery by adjustments in subsequent payments to which such individual or, on the basis of the same compensation, any other individual, is entitled under any act administered by the Board may, except as otherwise provided in this section, be made under regulations prescribed by the Board. If the individual to whom more than the correct amount has been paid dies before recovery is completed, recovery may be made by setoff or adjustments, under regulations prescribed by the Board, in subsequent payments due, under any act administered by the Board, to the estate, designee, next of kin, legal representative, or surviving spouse of such individual, with respect to the employment of such individual.

* * * * *

(c) There shall be no recovery in any case in which more than the correct amount of annuities, pensions, or death benefits under this subchapter or the Railroad Retirement Act of 1935 has been paid to an individual or payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of this subchapter or the act or would be against equity or good conscience.

* * * * *

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Subsecs. (a) and (c) of this section are set out in this supplement to correct translations therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 228c, 228s–2 of this title.

§ 228j. Railroad Retirement Board.

* * * * *

(b) Duties.

1. The Board shall have and exercise all the duties and powers necessary to administer this subchapter and the Railroad Retirement Act of 1935. The Board shall take such steps as may be necessary to enforce this subchapter and such act and make awards and certify payments. Decisions by the Board upon issues of law and fact relating to pensions, annuities, or death benefits shall not be subject to review by any other administrative or accounting officer, agent, or employee of the United States.

2. If the Board finds that an applicant is entitled to an annuity under the provisions of this subchapter or the Railroad Retirement Act of 1935 then the Board shall make an award fixing the amount of the annuity and shall certify the payment thereof as hereinafter provided; otherwise the application shall be denied.

* * * * *

6. In addition to the powers and duties expressly provided, the Board shall have and exercise with respect to the administration of this subchapter such of the powers, duties, and remedies provided in subsections (d), (m), and (n) of section 362 of this title as are not inconsistent with the express provisions of this subchapter.

* * * * *

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Subsec. (b)(1), (2) and (6) of this section are set out in this supplement to correct translations therein.

COMMISSION ON RAILROAD RETIREMENT

Pub. L. 91–377, § 7, Aug. 12, 1970, 84 Stat. 792, as amended by Pub. L. 92–46, § 7, July 2, 1971, 85 Stat. 102, provided that:

* * * * *

"(g) The Commission shall submit to the President and the Congress an interim report of the study authorized by this section not later than July 1, 1971, and a full and complete final report of such study not later than June 30, 1972, together with its recommendations for changes in the railroad retirement system designed to provide adequate levels of benefits thereunder on an actuarially sound basis. The Commission shall cease to exist sixty days after the date of the submission of such final report."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 228m, 228s–2 of this title.

§ 228k. Court jurisdiction.

Decisions of the Board determining the rights or liabilities of any person under this subchapter shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act except that the time within which proceedings for the review of a decision with respect to an annuity, pension, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant. (Aug. 29, 1935, ch. 812, § 11, 49 Stat. 973; June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 315; July 31, 1946, ch. 709, § 215, 60 Stat. 735.)

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Section is set out in this supplement to correct translations therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 228s–2 of this title.

§ 228l. Assignability; exemption from levy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 228c of this title.

§ 228m. Penalties.

(a) Any officer or agent of an employer, as the word "employer" is defined in section 228p of this title, or any employee acting in his own behalf, or any individual whether or not of the character hereinbefore defined, who shall willfully fail or refuse to make any report or furnish any information required, in accordance with the provisions of section 228j (b) 4 of this title, by the Board in the administration of this subchapter or the Railroad Retirement Act of 1935, or who shall knowingly make or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purpose of this subchapter or such act, or who shall knowingly make or aid in making any false or fraudulent statement or claim for the purpose of causing an award or payment under this subchapter or such act, shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

(b) All fines and penalties imposed by a court pursuant to this subchapter shall be paid to the court and be remitted from time to time by order of the judge to the Treasury of the United States to be credited to the Railroad Retirement Account. (Aug. 29, 1935, ch. 812, § 13, 49 Stat. 973; June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 316; Sept. 6, 1958, Pub. L. 85–927, pt. I, § 4, 72 Stat. 1781.)

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Section is set out in this supplement to correct translations therein.

§ 228n. Separability of provisions.

If any provision of this subchapter or the Railroad Retirement Act of 1935, or the application thereof to any person or circumstance, should be held invalid, the remainder of this subchapter or such act, or the application of such provision to other persons or circumstances, shall not be affected thereby. (Aug. 29, 1935, ch. 812, § 14, 49 Stat. 973; June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 316.)

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Section is set out in this supplement to correct translations therein.

§ 228o. Railroad Retirement Account.

(a) Establishment; appropriation; budget estimate.

There is created an account in the Treasury of the United States to be known as the Railroad Retirement Account. There is authorized to be appropriated to the account for each fiscal year, beginning with the fiscal year ending June 30, 1937, as an annual premium an amount sufficient, with a reasonable margin for contingencies, to provide for the payment of all annuities, pensions, and death benefits in accordance with the provisions of this subchapter and the Railroad Retirement Act of 1935. The Railroad Retirement Board shall submit

annually to the Bureau of the Budget an estimate of the appropriation to be made to the account.

* * * * *

(e) Annual report.

The Board shall include in its annual report a statement of the status and the operations of the Railroad Retirement Accounts. At intervals not longer than three years the Board shall make an estimate of the liabilities created by this subchapter and the Railroad Retirement Act of 1935 and shall include such estimate in its annual report. Such report shall also contain an estimate of the reduction in liabilities under title II of the Social Security Act arising as a result of the maintenance of this subchapter and the Railroad Retirement Act of 1935. (Aug. 29, 1935, ch. 812, § 15, 49 Stat. 974; June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 316; Sept. 22, 1959, Pub. L. 86–346, title I, § 104(4), 73 Stat. 622; Oct. 5, 1963, Pub. L. 88–133, title I, § 7(a), 77 Stat. 220; Oct. 30, 1966, Pub. L. 89–699, title I, § 2, 80 Stat. 1074; Mar. 17, 1970, Pub. L. 91–215, § 3, 84 Stat. 70; Aug. 12, 1970, Pub. L. 91–377, § 5, 84 Stat. 792.)

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Subsecs. (a) and (e) of this section are set out in this supplement to correct translations therein.

RAILROAD RETIREMENT SYSTEM: ACTUARIAL SOUNDNESS

LABOR-MANAGEMENT GROUP; NOTICE TO CONGRESSIONAL COMMITTEES; COMPOSITION; MEETINGS; PROGRESS REPORTS; REPORT TO CONGRESSIONAL COMMITTEES; SYSTEM RESTRUCTURE; DRAFT BILL.

Pub. L. 93–69, title I, § 107, July 10, 1973, 87 Stat. 165, provided that:

"(a) For the purposes of preparing and submitting the report provided for in subsection (c), it shall be the duty and responsibility of representatives of employees to designate (within the thirty-day period commencing on the date of enactment of this Act [July 10, 1973]) and notify the Senate Committee on Labor and Public Welfare and the House Committee on Interstate and Foreign Commerce of the identity (by name and position) of the labor members, and of representatives of carriers to designate (within such thirty-day period) and notify such committees of the identity (by name and position) of the management members, who shall compose the group authorized to prepare in their behalf, the report provided for in subsection (c).

"(b) The group so authorized to prepare the report provided for in subsection (c) shall—

"(1) hold such meetings (which shall not be less often than once each month) as may be necessary to assure that such report will be submitted within the time provided, and contain the material prescribed, under subsection (c); and

"(2) submit to such committees on September 1, 1973, November 1, 1973, and January 1, 1974, interim reports as to the progress being made toward completion of the report provided for in subsection (c); except that no such interim report shall be submitted after the submission of the report provided for in subsection (c).

"(c)(1) Not later than April 1, 1974, representatives of employees and representatives of carriers, acting through the group designated by them pursuant to subsection (a), shall submit to such committees a report containing their joint recommendations for restructuring the railroad retirement system in a manner which will assure the long-term actuarial soundness of such system, which recommendations shall take into account the specific recommendations of the Commission on Railroad Retirement.

"(2) The joint recommendations contained in such report shall be specific and shall be presented in the form of a draft bill."

CONGRESSIONAL DECLARATION OF 1974 LEGISLATIVE INTENT

Pub. L. 93–69, title I, § 108, July 10, 1973, 87 Stat. 165, provided that: "The Congress hereby declares its intent to enact legislation in 1974, effective not later than January 1, 1975, which will assure the long-term actuarial soundness of the railroad retirement system."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 228c–1, 231n of this title.

§ 228p. Appropriation.

There is authorized to be appropriated from time to time such sums as may be necessary to provide for the expenses of the Board in administering the provisions of this subchapter and the Railroad Retirement Act of 1935. (Aug 29, 1935, ch. 812, § 16, as added June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 317.)

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Section is set out in this supplement to correct translations therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 228m of this title.

§ 228q. Social Security.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 228e of this title.

§ 228r. Free transportation.

It shall not be unlawful for carriers by railroad subject to this subchapter to furnish free transportation to individuals receiving annuities or pensions under this subchapter or the Railroad Retirement Act of 1935 in the same manner as such transportation is furnished to employees in their service. (Aug. 29, 1935, ch. 812, § 18, as added June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 318.)

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Section is set out in this supplement to correct translations therein.

§ 228s. Incompetence.

(a) Every individual receiving or claiming benefits, or to whom any right or privilege is extended, under this subchapter or any other Act of Congress now or hereafter administered by the Board shall be conclusively presumed to have been competent until the date on which the Board receives written notice, in a form and manner acceptable to the Board, that he is an incompetent, or a minor, for whom a guardian or other person legally vested with the care of his person or estate has been appointed: *Provided, however,* That, regardless of the legal competency or incompetency of an individual entitled to a benefit (under any Act administered by the Board), the Board may, if it finds the interest of such individual to be served thereby, recognize actions by, and conduct transactions with, and make payments to, such individual, or recognize actions by, and conduct transactions with, and make payments to, a relative or some other person for such individual's use and benefit.

(b) Every guardian or other person legally vested with the care of the person or estate of an incompetent or minor who is receiving or claiming benefits, or to whom any right or privilege is extended, under this subchapter or any other Act of Congress now or hereafter administered by the Board shall have power everywhere, in the manner and to the extent prescribed by the Board, but subject to the provisions of the preceding subsection, to take any action necessary or appropriate to perfect any right or exercise any privilege of the incompetent or minor and to conduct all transactions on his behalf under this subchapter or any other act of Congress now or hereafter administered by the Board. Any payment made pursuant to the provisions of this or the preceding subsection shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment. (Aug. 29, 1935, ch. 812, § 19, (a), (b), as added June 24, 1937, ch. 382, pt. I, § 1, as added Apr. 8, 1942, ch. 227, § 11, 56 Stat. 207, 208, and amended Oct. 30, 1966, Pub. L. 89–700, title I, § 109, 80 Stat. 1085.)

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Section is set out in this supplement to correct translations therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 228e of this title.

§ 228s–1. Waiver of annuities and pensions.

Any person awarded an annuity or pension under this subchapter of this title may decline to accept all or any part of such annuity or pension by a waiver signed and filed with the Board. Such waiver may be revoked in writing at any time, but no payment of the annuity or pension waived shall be made covering the period during which such waiver was in effect. Such waiver shall have no effect on the amount of the spouse's annuity, or of a lump sum under section 228c(f)(2) of this title, which would otherwise be due, and it shall have no effect for purposes of the last sentence of section 228e(g)(1) of this title. (June 24, 1937, ch. 382, pt. I, § 20, as added Aug. 31, 1954, ch. 1164, pt. I, § 15, 68 Stat. 1040, and amended May 19, 1959, Pub. L. 86–28, pt. I, § 4, 73 Stat. 28; Aug. 29, 1959, Pub. L. 86–211, § 8(c), 73 Stat. 436; Oct. 30, 1966, Pub. L. 89–700, title I, § 110, 80 Stat. 1085.)

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Section is set out in this supplement to correct translations therein.

§ 228s–2. Hospital insurance benefits for the aged.

* * * * *

(b) Certification as qualified railroad retirement beneficiary.

Except as otherwise provided in this section, every individual who—

(1) has attained age 65, and

(2)(A) is entitled to an annuity under this subchapter, or (B) would be entitled to such an annuity had he ceased compensated service and, in the case of a spouse, had such spouse's husband or wife ceased compensated service, or (C) had been awarded a pension under section 228f of this title, or (D) bears a relationship to an employee which, by reason of section 228c(e) of this title has been, or would be, taken into account in calculating the amount of an annuity of such employee or his survivors,

shall be certified to the Secretary of Health, Education, and Welfare as a qualified railroad retirement beneficiary under section 226 of the Social Security Act.

* * * * *

(d) Entitlement to annuity or pension under Railroad Retirement Act of 1937 as including entitlement under Railroad Retirement Act of 1935.

For purposes of this section (and sections 1840, 1843, and 1870 of the Social Security Act), entitlement to an annuity or pension under this subchapter shall be deemed to include entitlement under the Railroad Retirement Act of 1935.

* * * * *

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

CODIFICATION

Subsecs. (b) and (d) of this section are set out in this supplement to correct translations therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 228s–3, 231e of this title; title 42 sections 426, 1395u.

§ 228s–3. Hospital insurance benefits for the disabled; certification as qualified individuals; applicability of other provisions.

Individuals under age 65—

(1) who have been entitled to annuities for not less than 24 consecutive months during each of which the first proviso of section 228c(e) of this title could have applied on the basis of an application which has been filed under paragraph 4 or 5 of section 228b(a) of this title, and are currently entitled to such annuities, or who are entitled to annuities under paragraph 2 or 3 of section 228b(a) of this title, and could have been paid annuities for not less than 24 consecutive months under section 223 of the Social Security Act if their service as employees were included in the term "employment" as defined in that Act, or

(2) who have been entitled to annuities under section 228e(a) of this title on the basis of disability, or could have been so entitled had they not been entitled on the basis of age or had they not been entitled under section 228e(b) of this title on the basis of having the custody of children, for not less than 24 consecutive months during each of which the first proviso of section 228c(e) of this title could have been applied on the basis of disability if an application for disability benefits had been filed, or

(3) who have been entitled to annuities for not less than 24 consecutive months under section 228e(c) of this title on the basis of a disability (within the meaning of section 228e(*l*)(1)(ii) of this title) or who could have been includible as disabled children for not less than 24 consecutive months in the computation of an annuity under the first proviso in section 228c(e) of this title and could currently be includible in such a computation,

shall be certified by the Board in the same manner, for the same purposes, and subject to the same conditions, restrictions, and other provisions as individuals specifically described in section 228s–2 of this title, and also subject to the same conditions, restrictions, and other provisions as are disability beneficiaries under title II of the Social Security Act in connection with their eligibility for hospital insurance benefits under part A of title XVIII of such Act and their eligibility to enroll under part B of such title XVIII; and for the purposes of this subchapter and title XVIII of the Social Security Act, individuals certified as provided in this section shall be considered individuals described in and certified under such section 228s–2 of this title. Notwithstanding the other provisions of this section it shall not apply to any individual who could not be taken into account on the basis of disability in calculating the annuity under the first proviso of section 228c(e) of this title without regard to the second paragraph of such section. (Aug. 29, 1935, ch. 812, § 22, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 201(d), 86 Stat. 1373.)

SUPERSEDURE OF RAILROAD RETIREMENT ACT OF 1937

The Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended [this subchapter], was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The Act, as thus amended and revised, was redesignated Railroad Retirement Act of 1974 and is set out in subchapter IV of this chapter.

REFERENCES IN TEXT

Section 223 of the Social Security Act, referred to in par. (1), is classified to section 423 of Title 42, The Public Health and Welfare.

That Act, referred to in par. (1), is the Social Security Act, which is classified to chapter 7 of Title 42.

Title II of the Social Security Act, referred to in the text, is classified to section 401 et seq. of Title 42.

Title XVIII of the Social Security Act, referred to in the text, is classified to section 1395 et seq. of Title 42.

Part A of title XVIII of such Act, referred to in the text, is part A of subchapter XVIII of the Social Security Act, which is classified to section 1395c et seq. of Title 42.

Part B of such title XVIII, referred to in the text, is part B of subchapter XVIII of the Social Security Act, which is classified to section 1395j et seq. of Title 42.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 426.

§ 228z. Increase in pensions, joint and survivor annuities awarded before July 1, 1956, and annuities under 1935 Act.

All pensions under section 228f of this title, all joint and survivor annuities and survivor annuities deriving from joint and survivor annuities under this subchapter awarded before July 1, 1956, and all annuities under the Railroad Retirement Act of 1935 are increased by 10 per centum. (Aug. 7, 1956, ch. 1022, § 3, 70 Stat. 1076.)

CODIFICATION

Section is set out in this supplement to correct translations therein.

§ 228z–1. Additional increase in pensions, joint and survivor annuities, widows' and widowers' insurance annuities, and annuities under 1935 Act.

All pensions under section 228f of this title, all joint and survivor annuities and survivor annuities deriving from joint and survivor annuities under this subchapter, awarded before the month next following the month of enactment of this act, all widows' and widowers' insurance annuities which began to accrue before the second calendar month next following the month of such enactment, and which, in accordance with the proviso in section 228e(a) or section 228e(b) of this title, are payable in the amount of the spouse's annuity to which the widow or widower was entitled, and all annuities under the Railroad Retirement Act of 1935, are increased by 10 per centum. (Pub. L. 86–28, pt. I, § 5, May 19, 1959, 73 Stat. 28.)

CODIFICATION

Section is set out in this supplement to correct translations therein.

SUBCHAPTER IV.—RAILROAD RETIREMENT ACT OF 1974 [NEW]

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 354, 361, 362, 772, 775 of this title; title 42 sections 405, 426, 1395s, 1395v, 1395gg, 1395kk.

§ 231. Definitions.

For the purposes of this subchapter—

(a)(1) The term "employer" shall include—

(i) any express company, sleeping car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

(iii) any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in paragraph (i) or (ii) of this subdivision;

(iv) any railroad association, traffic association tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency and any other association, bureau, agency, or organization which is controlled and maintained wholly or principally by two or more employers as defined in paragraph (i), (ii), or (iii) of this subdivision and which is engaged in the performance of services in connection with or incidental to railroad transportation; and

(v) any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and its State and National legislative committees, general committees, insurance departments, and local lodges and divisions, established pursuant to the constitution or bylaws of such organization.

(2) Notwithstanding the provisions of subdivision (1) of this subsection the term "employer" shall not include—

(i) any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities, and

(ii) any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general diesel-railroad system of transportation, but shall not exclude any part of the general diesel-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this paragraph.

(b)(1) The term "employee" means (i) any individual in the service of one or more employers for compensation, (ii) any individual who is in the employment relation to one or more employers, and (iii) an employee representative: *Provided, however,* That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) of this section only if he was in the service of or in the employment relation to an employer as defined in paragraph (i) of subsection (a)(1) of this section on or after August 29, 1935.

(2) The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a) of this section who before or after August 29, 1935, was in the service of an employer as defined in subsection (a) of this section and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d)(1) An individual is in the service of an employer whether his service is rendered within or without the United States if—

(i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and

(ii) he renders such service for compensation, or a method of computing the monthly compensation for such service is provided in section 231b(j) of this title.

(2) Notwithstanding the provisions of subdivision (1) of this subsection—

(i) an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States;

(ii) an individual shall be deemed to be in the service of a local lodge or division of a railway-labor-organization employer not conducting the principal part of its business in the United States only if (A) all, or substantially all, the individuals constituting the membership of such local lodge or division are employees of an employer conducting the principal part of its business in the United States; or (B) the headquarters of such local lodge or division is located in the United States: and

(iii) an individual shall be deemed to be in the service of a general committee of a railway-labor-organization employer not conducting the principal part of its business in the United States only if (A) he is representing a local lodge or division described in clause (A) or (B) of paragraph (ii); or (B) all, or substantially all, the individuals represented by such general committee are employees of an employer conducting the principal part of its business in the United States; or (C) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof. For purposes of this subdivision, the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e) (1) An individual shall be deemed to have been in the employment relation to an employer on August 29, 1935, if—

(i) he was on that date on leave of absence from his employment, expressly granted to him by the employer by whom he was employed, or by a duly authorized representative of such employer, and the grant of such leave of absence will have been established to the satisfaction of the Board before July 1947;

(ii) he was in the service of an employer after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive;

(iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last employer by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such employer and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (B) solely for such last stated reason an employer by whom he was employed before August 29, 1935, or an employer who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in paragraph (ii); or

(iv) he was on August 29, 1935, absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the employer, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his senority [1] rights.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, an individual shall not be deemed to have been in the employment relation to an employer on August 29, 1935, if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 228f of this title, or if during the last payroll period before August 29, 1935, in which he rendered service to an employer he was not in the service of an employer, in accordance with subsection (d) of this section, with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a) of this section.

(f) (1) The term "years of service" shall mean the number of years an individual as an employee shall have rendered service to one or more employers for compensation or received remuneration for time lost, and shall be computed in accordance with the provisions of section 231b(i) of this title. Twelve calendar months, consecutive or otherwise, in each of which an employee has rendered such service or received such wages for time lost, shall constitute a year of service. Ultimate fractions shall be taken at their actual value, except that if the individual will have had not less than one hundred twenty-six months of service, an ultimate fraction of six months or more shall be taken as one year.

(2) Where service prior to August 29, 1935, may be included in the computation of years of service as provided in subdivision (3) of section 231b(i) of this title, it may be included as to—

(i) service rendered to a person which was an employer on August 29, 1935, irrespective of whether such person was an employer at the time such service was rendered;

(ii) service rendered to any express company, sleeping-car company, or carrier by railroad which was a predecessor of a company which, on August 29, 1935, was an employer as defined in paragraph (i) of subsection (a) (1) of this section, irrespective of whether such predecessor was an employer at the time such service was rendered; and

[1] So in original.

(iii) service rendered to a person not an employer in the performance of operations involving the use of standard railroad equipment if such operations were performed by an employer on August 29, 1935.

(g)(1) For purposes of section 231b(i)(2) of this title, an individual shall be deemed to have been in "military service" when commissioned or enrolled in the active service of the land or naval forces of the United States and until resignation or discharge therefrom; and the service of any individual in any reserve component of the land or naval forces of the United States, while serving in the land or naval forces of the United States for any period, even though less than thirty days, shall be deemed to have been active service in such force during such period.

(2) For purposes of section 231b(i)(2) of this title, a "war service period" shall mean (A) any war period, or (B) with respect to any particular individual, any period during which such individual (i) having been in military service at the end of a war period, was required to continue in military service, or (ii) was required by call of the President, or by any Act of Congress or regulation, order, or proclamation pursuant thereto, to enter and continue in military service, or (C) any period after September 7, 1939, with respect to which a state of national emergency was duly declared to exist which requires a strengthening of the national defense.

(3) For purposes of section 231b(i)(2) of this title, a "war period" shall be deemed to have begun on whichever of the following dates is the earliest: (A) the date on which the Congress of the United States declared war; or (B) the date as of which the Congress of the United States declared that a state of war has existed; or (C) the date on which war was declared by one or more foreign states against the United States; or (D) the date on which any part of the United States or any territory under its jurisdiction was invaded or attacked by any armed force of one or more foreign states; or (E) the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government.

(4) For purposes of section 231b(i)(2) of this title, a "war period" shall be deemed to have ended on the date on which hostilities ceased.

(h)(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. Compensation earned in any calendar month before 1947 shall be compensation earned in any calendar year after deemed paid in such month regardless of whether or when payment will have been in fact made, and 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or if the employee establishes, subject to the provisions of section 231h of this title, the period during which such compensation will have been earned.

(2) An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

(3) Solely for purposes of determining amounts to be included in the compensation of an employee, the term "compensation" shall also include cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(4) Tips included as compensation by reason of the provisions of subdivision (3) shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of Title 26 or, if no statement including such tips is so furnished, at the time received. Tips so deemed to be paid in any month shall be deemed paid for services rendered in such month.

(5) In determining compensation, there shall be attributable as compensation paid to an employee in calendar months in which he is in military service creditable under section 231b(i)(2) of this title, in addition to any other compensation paid to him with respect to such months—

(i) for each such calendar month prior to 1968, $160;

(ii) for each such calendar month after 1967 and prior to 1975, $260; and

(iii) for each such calendar month after 1974, the amount which is creditable as such individual's "wages" under the third paragraph of section 409 of Title 42.

(6) Notwithstanding the provisions of the preceding subdivisions of this subsection, the term "compensation" shall not include—

(i) tips, except as is provided under subdivision (3) of this subsection;

(ii) the voluntary payment by an employer, without deduction from the remuneration of the employee, of any tax now or hereafter imposed with respect to the compensation of such employee;

(iii) remuneration for service which is performed by a non-resident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph

(F) or (J) of section 1101(a)(15) of Title 8, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be;

(iv) remuneration earned in the service of a local lodge or division of a railway-labor-organization employer with respect to any calendar month in which the amount of such remuneration is less than $25; and

(v) remuneration for service as a delegate to a national or international convention of a railway-labor-organization employer if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service."

(i) The term "Board" means the Railroad Retirement Board.

(j) The term "company" includes corporations, associations, and joint-stock companies.

(k) The term "employee" includes an officer of an employer.

(l) The term "person" means an individual, a partnership, an association, a joint-stock company, a corporation, or the United States or any other governmental body.

(m) The term "United States," when used in a geographical sense, means the States and the District of Columbia.

(n) The term "Social Security Act" means the Social Security Act as amended from time to time.

(o) An individual shall be deemed to have "a current connection with the railroad industry" at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under this subchapter begins to accrue to him, or the month in which he dies if that first occurs, he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer or employment with the Department of Transportation, the Interstate Commerce Commission, the National Mediation Board, or the Railroad Retirement Board in the period before such month and after the end of such thirty months. For the purposes of section 231a(d) of this title only, an individual shall be deemed also to have a "current connection with the railroad industry" if he will have completed ten years of service and (A) he would be neither fully nor currently insured under the Social Security Act if his service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act, or (B) he has no quarters of coverage under the Social Security Act.

(p) The term "annuity" means a monthly sum which is payable on the first day of each calendar month for the accrual during the preceding calendar month.

(q) The terms "quarter" and "calendar quarter" shall mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(r) For purposes of this subchapter, a person shall be considered to be permanently insured under the Social Security Act on December 31, 1974, if he or she would be fully insured within the meaning of section 214(a) of that Act when he or she attains age 62 solely on the basis of his or her quarters of coverage under that Act acquired prior to January 1, 1975. (Aug. 29, 1935, ch. 812, § 1, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1305.)

REFERENCES IN TEXT

Part I of the Interstate Commerce Act, referred to in subsec. (a)(1)(i), is set out in section 1 et seq. of Title 49, Transportation.

The Railway Labor Act, referred to in subsecs. (a)(1)(v) and (c), is classified to section 151 et seq. of this title.

The Social Security Act, referred to in subsecs. (n), (o), (r), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified to section 301 et seq. of Title 42, The Public Health and Welfare.

Section 214(a) of that Act, referred to in subsec. (r), is classified to section 414(a) of Title 42.

CODIFICATION

The statutory system of retirement for railroad employees set out in this subchapter is act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, eff. Jan. 1, 1975. The system as thus amended and revised was redesignated as the Railroad Retirement Act of 1974. See section 231t of this title.

The Act is set out in this subchapter carrying a statutory credit showing enactment by Pub. L. 93–445 without reference to amendments made to the Act between its original enactment in 1935 and 1974. For the text of the Act, as then designated the Railroad Retirement Act of 1937, and for the credits and note material covering amendments thereto between 1935 and 1974, see subchapter III of this chapter.

PRIOR PROVISIONS

A prior section of act Aug. 29, 1935, set out as section 228a of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

TRANSITIONAL PROVISIONS

Sections 201 to 210 of title II of Pub. L. 93–445, effective Jan. 1, 1975, as amended by Pub. L. 94–92, title II, § 202(a), Aug. 9, 1975, 89 Stat. 465, provided that:

"Sec. 201. The claims of individuals who, prior to the effective date of title I of this Act [see Effective Date note under section 231a of this title], became eligible for annuities, supplemental annuities, or death benefits under section 2, 3(j), or 5 of the Railroad Retirement Act of 1937 [section 228b, 228c(j) or 228e of this title] shall be adjudicated by the Board under that Act [subchapter III of this chapter] in the same manner and with the same effect as if title I of this Act [this subchapter] had not been enacted: *Provided, however,* That no annuity, supplemental annuity, or death benefit shall be awarded under the Railroad Retirement Act of 1937 [subchapter III of this chapter] on the basis of an application therefor filed with the Board on or after the effective date of title I of this Act [see Effective Date note under section 231a of this title]: *Provided, further,* That no annuity under the Railroad Retirement Act of 1935 [subchapter II of this chapter], no annuity or supplemental annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter], and no pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] shall be payable for any month after December 31, 1974.

"Sec. 202. (a) Every individual who would have been entitled to an annuity under the Railroad Retirement Act of 1935 [subchapter II of this chapter] for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under paragraph (i) of section 2(a)(1) of the Railroad Retire-

ment Act of 1974 [section 231a(a)(1) of this title], beginning January 1, 1975, in an amount determined under the provisions of section 3(a) of such Act [section 231b(a) of this title], which amount shall initially be equal to the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in such individual's annuity under the Railroad Retirement Act of 1935 [subchapter II of this chapter] pursuant to the provisions of section 105 of Public Law 93–69 [set out as a note under section 228f of this title], less the amount of any monthly insurance benefit to which such individual is actually entitled (before any deductions on account of work) under the Social Security Act [section 301 et seq. of Title 42, The Public Health and Welfare].

"(b) The amount of the annuity of an individual under subsection (a) of this section shall be increased by an amount, if any, equal to the amount by which (i) his annuity under the Railroad Retirement Act of 1935 [subchapter II of this chapter] for the month of December 1974 exceeds (ii) his annuity under subsection (a) of this section for the month of January 1975.

"Sec. 203. (a) Every individual who would have been entitled to a pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under paragraph (1) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title] in an amount determined under the provisions of section 3(a) of such Act [section 231b(a) of this title], which amount shall initially be equal to the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in such individual's pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] pursuant to the provisions of section 105 of Public Law 93–69 [set out as a note under section 228f of this title], less the amount of any monthly insurance benefit to which such individual is actually entitled (before any deductions on account of work) under the Social Security Act.

"(b) The amount of the annuity of an individual under subsection (a) of this section shall be increased by an amount, if any, equal to the amount by which (i) his pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] for the month of December 1974 exceeds (ii) his annuity under subsection (a) of this section for the month of January 1975.

"(c) The annuities of each individual under the preceding subsections of this section shall be paid on January 1, 1975, and on the first day of each calendar month thereafter during his life.

"Sec. 204. (a) Every individual who was entitled to an annuity under section 2(a)1, 2(a)2, 2(a)3, 2(a)4, or 2(a)5 of the Railroad Retirement Act of 1937 [section 228b(a)1, 228b(a)2, 228b(a)3, 228b(a)4, or 228b(a)5 of this title] for the month of December 1974, or who would have been entitled to such an annuity for such month except for the provisions of section 2(d) of such Act [section 228b(d) of this title], and who would have been entitled to such an annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under paragraph (i), (ii), (iii), (iv), or (v), respectively, of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title], beginning January 1, 1975: *Provided, however,* That if an individual who was entitled to an annuity under section 2(a)4 or 2(a)5 of the Railroad Retirement Act of 1974 [probably should read "Railroad Retirement Act of 1937" classified to section 228b(a)4 or 228b(a)5, of this title] is age 65 or older, on January 1, 1975, such individual shall be entitled to an annuity under paragraph (i) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title]. For purposes of this subsection—

"(1) that portion of the individual's annuity as is provided under section 3(a) of the Railroad Retirement Act of 1974 [section 231b(a) of this title] shall initially be in an amount equal to the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in the amount of such individual's annuity as computed under the provisions of section 3(a) [section 228c(a) of this title], and that part of section 3(e) [section 228c(e) of this title], which preceded the first proviso, of the Railroad Retirement Act of 1937, less the amount of any monthly insurance benefit to which such individual is actually entitled (before any deductions on account of work) under the Social Security Act;

"(2) that portion of the individual's annuity as is provided under section 3(b)(1) of the Railroad Retirement Act of 1974 [section 231b(b)(1) of this title] shall be in an amount, if any, equal to the amount by which (A) his annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] for the month of December 1974 (before any reduction on account of age and without regard to section 2(d) of such Act [section 228b(d) of this title]) exceeds (B)(i), if such individual is entitled to an annuity amount provided under paragraph (3) of this subsection, the amount of the annuity which would have been provided such individual under paragraph (1) of this subsection (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act) for the month of January 1975 if he had no wages or self-employment income under the Social Security Act other than wages derived from service as an employee under the Railroad Retirement Act of 1974 [this subchapter] after December 31, 1936, and before January 1, 1975, or (ii), if such individual is not entitled to an annuity amount provided under paragraph (3) of this subsection, the amount of his annuity provided under paragraph (1) of this subsection (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act) for the month of January 1975: *Provided, however,* That if the annuity of any individual under the Railroad Retirement Act of 1937 [subchapter III of this chapter] for the month of December 1974 was computed under the first proviso of section 3(e) of such Act [section 228c(e) of this title], the annuity of such individual for purposes of clause (A) of this paragraph shall be the annuity which such individual would have received under such Act [subchapter III of this chapter] for the month of December 1974, if no other person had been included in the computation of the annuity of such individual; and

"(3) if the individual was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act on December 31, 1974, or was fully insured under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this subsection shall be increased by an amount determined under the provisions of section 3(h)(1) of the Railroad Retirement Act of 1974 [section 231b(h)(1) of this title]: *Provided, however,* That, if the individual was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act on December 31, 1974, such amount shall not be less nor more than an amount which would cause the total of the annuity amounts provided the individual by the provisions of this subsection for the month of January 1975 to equal the total of the annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter] (prior to any reduction on account of age and without regard to section 2(d) of that Act [section 228b(d) of this title]) plus the old-age or disability insurance benefit under the Social Security Act (before any reduction on account of age and deductions on account of work) which such individual would have received for such month if this Act [enacting this subchapter] had not been enacted.

"(4) if the individual was entitled to a wife's, husband's, widow's, or widower's insurance benefit under the Social Security Act on December 31, 1974, or is the wife, husband, widow, or widower of a person who was fully insured under that Act on that date, the

annuity amounts provided under paragraphs (1) and (2) of this subsection shall be increased by an amount determined under the provisions of section 3(h)(3) of the Railroad Retirement Act of 1974 [section 231b(h)(3) of this title].

"(b) An individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title], but who could not have become eligible for an annuity under paragraph 2 of such section, shall not be eligible for an annuity under paragraph (ii) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title].

"(c) An individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] shall not be entitled to an annuity amount computed under the provisions of section 3(c) of the Railroad Retirement Act of 1974 [section 231b(c) of this title]: *Provided, however,* That the provisions of this subsection shall not be applicable (i) to an individual who will have rendered at least twelve months of service as an employee to an employer (as defined in the Railroad Retirement Act of 1974 [this section] after December 31, 1974, or (ii) to an individual who was awarded an annuity under section 2(a)4 or 2(a)5 of the Railroad Retirement Act of 1937 [section 228b(a)4 or 228b(a)5 of this title] and who recovered from disability and returned to the service of an employer (as defined in the Railroad Retirement Act of 1974) [this section] after December 31, 1974.

[Section 202(b) of Pub. L. 94–92 provided that: "The amendment made by this section [enacting section 204(c) of Pub. L. 93–445] shall be effective January 1, 1975."]

"Sec. 205. (a) Every individual who was entitled to a supplemental annuity under section 3(j) of the Railroad Retirement Act of 1937 [section 228c(j) of this title] for the month of December 1974, or who would have been entitled to such a supplemental annuity for such month except for the provisions of section 2(d) of such Act, [section 228b(d) of this title], and who would have been entitled to such a supplemental annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to a supplemental annuity under section 2(b)(1) of the Railroad Retirement Act of 1974 [section 231a(b)(1) of this title], beginning January 1, 1975, in an amount, the provisions of section 3(e) of such Act [section 231b(e) of this title] notwithstanding, equal to the amount of the supplemental annuity to which such individual was entitled under section 3(j) of the Railroad Retirement Act of 1937 [section 228c(j) of this title] for the month of December 1974, or to which such individual would have been entitled for such month under such section 3(j) [section 228c(j) of this title] except for the provisions of section 2(d) of such Act [section 228b(d) of this title].

"(b) An individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title], but who could not have become eligible for a supplemental annuity under section 3(j) of such Act [section 228c(j) of this title] if this Act had not been enacted, shall not be eligible for a supplemental annuity under section 2(b) of the Railroad Retirement Act of 1974 [section 231a(b) of this title].

"Sec. 206. Every spouse who was entitled to an annuity under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or 228b(h) of this title] for the month of December 1974, or who would have been entitled to such an annuity for such month except for the provisions of section 2(d) of such Act [section 228b(d) of this title], and who would have been entitled to such an annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under section 2(c) of the Railroad Retirement Act of 1974 [section 231a(c) of this title] beginning January 1, 1975. For purposes of this section—

"(1) that portion of the spouse's annuity as is provided under section 4(a) of the Railroad Retirement Act of 1974 [section 231c(a) of this title] shall initially be in an amount equal to the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in the amount of such spouse's annuity as computed under the provisions of section 2 of the Railroad Retirement Act of 1937 [section 228b of this title], less the amount of any wife's insurance benefit or husband's insurance benefit to which such spouse is actually entitled (before any deductions on account of work) under the Social Security Act on the basis of such individual's wages and self-employment income: *Provided, however,* That the amount of such annuity shall be subject to reduction in accordance with the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(h) or 402(q) of Title 42], other than a reduction on account of age, in the same manner as any wife's insurance benefit or husband's insurance benefit payable under section 202 of the Social Security Act [section 402 of Title 42] and shall also be subject to reduction in accordance with the provisions of section 4(i)(2) of the Railroad Retirement Act of 1974 [section 231c(i)(2) of of this title];

"(2) that portion of the spouse's annuity as is provided under section 4(b) of the Railroad Retirement Act of 1974 [section 231c(b) of this title] shall be in an amount, if any, equal to 50 per centum of the individual's annuity as computed in accordance with the provisions of paragraph (2) of section 204(a) of this title: *Provided, however,* That, in case of a spouse who is not entitled to an annuity amount provided under paragraph (3) of this section, if (A) the amounts of the annuity provided a spouse for the month of January 1975 by the provisions of paragraph (1) (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act) and the proceeding provisions of this paragraph exceed (B) the amount of the annuity to which such spouse was entitled (before any reduction on account of age) for the month of December 1974 under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or 228b(h) of this title] (deeming, for this purpose, any increase in the amount of such annuity which, had this Act [enacting this subchapter] not been enacted, would have become effective January 1, 1975, by reason of an increase in the maximum amount payable as a wife's insurance benefit under the Social Security Act to have been effective for the month of December 1974), or to which such spouse would have been entitled for such month under such section 2(e) or 2(h) [section 228b(e) or 228b(h) of this title] except for the provisions of section 2(d) of such Act [section 228b(d) of this title], the amount of the annuity provided such spouse for the month of January 1975 by the preceding provisions of this paragraph shall be reduced until the total of the amounts described in clause (A) of this proviso equals the amount described in clause (B): *Provided further,* That, if the amount of the annuity of the spouse provided by paragraph (1) of this section is reduced by reason of the provisions of section 4(i)(2) of the Railroad Retirement Act of 1974 [section 231c(i)(2) of this title], the amount of the annuity provided such spouse by the preceding provisions of this paragraph shall not be less than an amount which would cause the total of the annuity amounts provided such spouse under paragraph (1) (before any reduction pursuant to the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(k) or 402(q) of Title 42] and before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act) and paragraph (2) of this section for the month of January 1975 to equal the amount of the annuity (before any reduction on account of age) which such spouse would have received for such month under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or 228b(h) of this title] (without regard to the provisions of section 2(d) of that Act [section 228b(d) of this title]) if this Act [enacting this subchapter] had not been enacted; and

"(3) if the spouse was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act of December 31, 1974, or was fully insured under that Act on that date, or was entitled to a wife's or a husband's insurance benefit under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this section shall be increased by an amount determined under the provisions of sec-

tion 4(e)(1) [section 231c(e)(1) of this title], or, if the spouse was entitled only to a wife's or husband's insurance benefit, 4(e)(3) [section 231c(e)(3) of this title] of the Railroad Retirement Act of 1974: *Provided, however,* That, if the spouse was entitled to a monthly insurance benefit under the Social Security Act of December 31, 1974, such amount shall not be less nor more than an amount which would cause (A) the total of (i) the annuity amounts provided the spouse by the provisions of this section for the month of January 1975 plus (ii) the monthly insurance benefit to which such spouse is entitled for that month under the Social Security Act (before any reductions on account of age and deductions on account of work) to equal (B) the total of (i) the spouse's annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter] (prior to any reduction on account of age and without regard to section 2(d) of that Act [section 228b(d) of this title]) plus (ii) the monthly insurance benefit under the Social Security Act (before any reduction on account of age and deductions on account of work) which such spouse would have received for such month if this Act [enacting this subchapter] had not been enacted.

"Sec. 207. Every survivor who was entitled to an annuity under section 5 of the Railroad Retirement Act of 1937 [section 228e of this title] for the month of December 1974, or who would have been entitled to such an annuity for such month except for the provisions of section 5(1) of such Act [section 228e(1) of this title], and who would have been entitled to such an annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under section 2(d) of the Railroad Retirement Act of 1974 [section 231a(d) of this title] beginning January 1, 1975. For purposes of this section—

"(1) that portion of the survivor's annuity as is provided under section 4(f) of the Railroad Retirement Act of 1974 [section 231c(f) of this title] shall initially be in an amount equal to the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in the amount of such survivor's annuity as computed under the provisions of section 5(q) of the Railroad Retirement Act of 1937 [section 228e(q) of this title]: *Provided, however,* That the amount of such annuity shall be subject to reduction in accordance with the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(k) or 402(q) of Title 42] in the same manner as any widow's insurance benefit, mother's insurance benefit, widower's insurance benefit, parent's insurance benefit, or child's insurance benefit payable under section 202 of the Social Security Act [section 402 of Title 42] and shall also be subject to reduction in accordance with the provisions of section 4(i)(2) of the Railroad Retirement Act of 1974 [section 231c(i)(2) of this title];

"(2) that portion of the survivor's annuity as is provided under section 4(g) of the Railroad Retirement Act of 1974 [section 231c(g) of this title] shall initially be in an amount equal to 30 per centum of the amount computed in accordance with the provisions of paragraph (1) of this section prior to any reductions, other than reductions on account of age, in accordance with the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(k) or 402(q) of Title 42] and prior to any reductions in accordance with, the provisions of section 4(i)(2) of the Railroad Retirement Act of 1974 [section 231c(i)(2) of this title]: *Provided, however,* That, if such survivor is not entitled to an annuity amount provided under paragraph (3) of this section, such amount shall not be less than an amount which would cause (A) the total of the annuity amounts provided the survivor by the provisions of this section for the month of January 1975 to equal (B) the amount of the annuity which the survivor would have received for such month under section 5 of the Railroad Retirement Act of 1937 [section 228e of this title] (without regard to section 5(1) of that Act [section 228e(1) of this title]) if this Act [enacting this subchapter] had not been enacted; and

"(3) if the survivor is a widow or widower who was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act on December 31, 1974, or was fully insured under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this section shall be increased by an amount determined under the provisions of 4(h)(1) of the Railroad Retirement Act of 1974 [section 231c(h)(1) of this title]: *Provided, however,* That, if the widow or widower was entitled to a monthly insurance benefit under the Social Security Act on December 31, 1974, such amount shall not be less nor more than an amount which would cause (A) the total of (i) the annuity amounts provided the widow or widower by the provisions of this section for the month of January 1975 plus (ii) the monthly insurance benefit to which such widow or widower is entitled for that month under the Social Security Act (before any deductions on account of work) to equal (B) the total of (i) the widow's or widower's annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter] (without regard to section 5(1) of that Act [section 228e(1) of this title]) plus (ii) the monthly insurance benefit under the Social Security Act (before any deductions on account of work) which such widow or widower would have received for such month if this Act [enacting this subchapter] had not been enacted.

"Sec. 208. For purposes of paragraph (1) of section 204(a), paragraph (1) of section 206, and paragraph (1) of section 207, the fact that the amount of the annuity payable to an individual, spouse, or survivor under the Railroad Retirement Act of 1937 [subchapter III of this chapter] for the month of December 1974 may not (i) in the case of an individual have been computed under the provisions of section 3(a) of such Act [section 228c(a) of this title] or that part of section 3(e) of such Act [section 228c(e) of this title] which precedes the first proviso; (ii) in the case of a spouse, have been computed under the provisions of section 2 of such Act [section 228b of this title], or (iii) in the case of a survivor, have been computed under the provisions of section 5 of such Act [section 228e of this title], shall be disregarded, and the amount determined under clause (i) of section 3(a)(6) of such Act [section 228c(a)(6) of this title] with respect to such individual, spouse, or survivor shall, for purposes of such paragraphs, be the amount which would have been determined under such clause (i) if the annuity of such individual had been computed under the provisions of section 3(a) [section 228c(a) of this title], and that part of section 3(e) [section 228c(e) of this title] which preceded the first proviso, of such Act; the annuity of such spouse had been computed under the provisions of section 2 of such Act [section 228b of this title]; or the annuity of such survivor had been computed under the provisions of section 5 of such Act [section 228e of this title].

"Sec. 209. (a) Whenever monthly insurance benefits under section 202 of the Social Security Act [section 402 of Title 42] are increased, the amount of each annuity provided by section 202(a), section 203(a), paragraph (1) of section 204(a), paragraph (1) of section 206, and paragraphs (1) and (2) of section 207 shall be increased in the same manner, and effective the same date as other annuities of the same type payable under section 2 of the Railroad Retirement Act of 1974 [section 231a of this title] are increased.

"(b) The annuity amounts provided by section 202(b), section 203(b), paragraph (2) of section 204(a), and paragraph (2) of section 206 shall be increased by the same percentage, or percentages, and effective the same date, or dates, as other annuity amounts of the same type are increased pursuant to the provisions of section 3(g) of the Railroad Retirement Act of 1974 [section 231b(g) of this title].

"Sec. 210. The election of a joint and survivor annuity made before July 31, 1946, by an individual to whom an annuity accrues under the Railroad Retirement Act of 1937 [subchapter III of this chapter] before January 1, 1975, shall be given effect as though the provisions of law under which the election was made had continued to be operative unless such election had been revoked prior to the time the annuity of such individual began to accrue."

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly annuity or pension payment under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 231a, 231b, 231e, 231f, 231n, 231q, 352 of this title; title 42 sections 402, 405.

§ 231a. Annuity eligibility requirements.

(a) (1) The following-described individuals, if they shall have completed ten years of service and shall have filed application for annuities, shall, subject to the conditions set forth in subsections (e), (f), and (h) of this section, be entitled to annuities in the amounts provided under section 231b of this title—

(i) individuals who have attained the age of sixty-five;

(ii) individuals who have attained the age of sixty and have completed thirty years of service;

(iii) individuals who have attained the age of sixty-two and have completed less than thirty years of service, but the annuity of such individuals shall be reduced by 1/180 for each calendar month that he or she is under age sixty-five when the annuity begins to accrue;

(iv) individuals who have a current connection with the railroad industry, whose permanent physical or mental condition is such as to be disabling for work in their regular occupation, and who (A) have completed twenty years of service or (B) have attained the age of sixty; and

(v) individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment.

(2) For the purposes of paragraph (iv) of subdivision (1), the Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been disqualified by his employer for service in his regular occupation in accordance with the applicable standards so established; if the employee will not have been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For purposes of this subdivision and paragraph (iv) of subdivision (1), an employee's "regular occupation" shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary, except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation.

(3) Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph (iv) or (v) of subdivision (1) and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains the age of sixty-five. If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains the age of sixty-five years, his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled.

(b) (1) An individual who—

(i) has attained age 60 and completed thirty years of service or attained age 65;

(ii) has completed twenty-five years of service;

(iii) is entitled to the payment of an annuity under subsection (a) (1); and

(iv) had a current connection with the railroad industry at the time such annuity began to accrue;

shall, subject to the conditions set forth in subdivision (2) of this subsection and in subsections (e) and (h) of this section, be entitled to a supplemental annuity in the amount provided under section 231b of this title: *Provided, however,* That in cases where an individual's annuity under subsection (a) (1) of this section begins to accrue on other than the first day of the month, the amount of any supplemental annuity to which he is entitled for that month shall be reduced by one-thirtieth for each day with respect to which he is not entitled to an annuity under subsection (a) (1) of this section.

(2) No individual shall be entitled to a supplemental annuity provided by this subsection for any period after he renders any service as an employee for compensation after his supplemental annuity closing date, which is the last day of the month following the month in which he attains age 65: *Provided, however,* That the supplemental annuity closing date of an individual who attained age 65 prior to January 1, 1975, shall be determined under section 228c(j)(4) of this title: *Provided further,* That for an employee whose supplemental annuity closing date occurs after he has completed at least 23 years of service but before he has completed 25 years of service and before he would have been entitled (upon filing an application therefor) to monthly insurance benefits under section 402(a) of Title 42 if he had no service as an employee under

this subchapter, such closing date shall be extended to the earlier of (A) the day before the first day of the first month for which he would (on application) be entitled to monthly insurance benefits under section 402(a) of Title 42 if he had no service as an employee under this subchapter, or (B) the last day of the first month for which he qualifies for a supplemental annuity under this subsection.

(3) The provisions of subdivision (2) shall not supersede the provisions of any agreement reached through collective bargaining which provides for mandatory retirement at an age less than the applicable supplemental annuity closing date determined under such subdivision.

(c)(1) The spouse of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a)(1) of this section and (B) has attained the age of 60 and has completed thirty years of service or has attained the age of 62, and

(ii) such spouse (A) has attained the age of 65, or (B) has attained the age of 60 and such individual has completed thirty years of service, or (C), in the case of a wife, has in her care (individually or jointly with her husband) a child who meets the qualifications prescribed in paragraph (iii) of subsection (d)(1) of this section (without regard to the provisions of clause (B) of such paragraph),

shall, subject to the conditions set forth in subsections (e), (f), and (h) of this section, be entitled to a spouse's annuity, if he or she has filed application therefor, in the amount provided under section 231c of this title.

(2) A spouse who would be entitled to an annuity under subdivision (1) if he or she had attained the age of 65 may elect upon or after attaining the age of 62 to receive such annuity, but the annuity in any such case shall be reduced by 1/180 for each calendar month that the spouse is under age 65 when the annuity begins to accrue.

(3) For the purposes of this subchapter, the term "spouse" shall mean the wife or husband of an annuitant under subsection (a)(1) of this section who (i) was married to such annuitant for a period of not less than one year immediately preceding the day on which the application for a spouse's annuity is filed, or in the month prior to his or her marriage to such annuitant was eligible for an annuity under paragraph (i) or (iv) of subsection (d)(1) of this section or, on the basis of disability, under paragraph (iii) thereof, or is the parent of such annuitant's son or daughter, if, as of the day on which the application for a spouse's annuity is filed, such wife or husband and such annuitant were members of the same household, or such wife or husband was receiving regular contributions from such annuitant toward her or his support, or such annuitant has been ordered by any court to contribute to the support of such wife or husband; and (ii) in the case of a husband, was receiving at least one-half of his support from his wife at the time his wife's annuity under subsection (a)(1) of this section began.

(d)(1) The following described survivors of a deceased employee who will have completed ten years of service and will have had a current connection with the railroad industry at the time of his death shall, subject to the conditions set forth in subsections (g) and (h) of this section, be entitled to annuities, if they have filed application therefor, in the amounts provided under section 231c of this title—

(i) a widow (as defined in section 416 (c) and (k) of Title 42 or widower (as defined in section 416 (g) and (k) of Title 42) of such a deceased employee who has not remarried and who (A) will have attained the age of sixty or (B) will have attained the age of fifty but will not have attained age sixty and is under a disability which began before the end of the period prescribed in subdivision (2), and who, in the case of a widower, was receiving at least one-half of his support from the deceased employee at the time of her death or at the time her annuity under subseltion (a)(1) of this section began;

(ii) a widow (as defined in section 416 (c) and (k) of Title 42) of such a deceased employee who has not remarried and who (A) is not entitled to an annuity under paragraph (i), and (B) at the time of filing an application for an annuity under this paragraph, will have in her care a child of such deceased employee, which child is entitled to an annuity under paragraph (iii) (other than an annuity payable to a child who has attained age 18 and is not under a disability);

(iii) a child (as defined in section 416 (e) and (k) of Title 42) of such a deceased employee who (A) will be less than eighteen years of age, or (B) will be less than twenty-two years of age and a full-time student at an educational institution, or (C) will, without regard to his age, be under a disability which began before he attained age twenty-two or before the close of the eighty-fourth month following the month in which his most recent entitlement to an annuity under this paragraph terminated because he ceased to be under a disability, and who is unmarried and was dependent upon the employee at the time of the employee's death; and

(iv) a parent (as defined in section 402 (h)(3) of Title 42) of such a deceased employee who (A) will have attained the age of sixty and (B) will have received at least one-half of his or her support from such deceased employee at the time of the employees' death and (C) will not have remarried after the employee's death: *Provided, however,* That no parent will be entitled to an annuity under this paragraph on the basis of the deceased employee's compensation and years of service in any case where such employee died leaving a widow or widower or a child who is, or who might in the future become, entitled to an annuity under this subsection.

(2) The period referred to in clause (B) of subdivision (1)(i) is the period (i) beginning with the latest of (A) the month of the employee's death, (B) in the case of a widow, the last month for which she was entitled to an annuity under paragraph (ii) of subdivision (1) as the widow of the deceased employee, or (C) the month in which the widow's or widower's previous entitlement to an annuity as the widow or widower of the deceased employee terminated because her or his disability had ceased and (ii) ending with the month before the month in

which she or he attains age sixty, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(3) For purposes of paragraph (i) or (iii) of subdivision (1), a widow, widower, or child shall be under a disability if her or his permanent physical or mental condition is such that she or he is unable to engage in any regular employment. The provisions of subsection (a)(3) of this section as to the proof of disability shall apply with regard to determinations with respect to disability under subdivision (1).

(4) In determining for purposes of this subsection and subdivision (3) of subsection (c) of this section whether an applicant is the wife, husband, widow, widower, child, or parent of a deceased employee as claimed, the rules set forth in section 416(h) of Title 42 shall be applied deeming for this purpose, individuals entitled to an annuity under subsection (c) of this section to be entitled to benefits under subsection (b) or (c) of section 402 of Title 42 and individuals entitled to an annuity under paragraph (i) or (ii) of subsection (d)(1) of this section to be entitled to a benefit under subsection (e), (f), or (g) of section 402 of Title 42. For purposes of paragraph (iii) of subdivision (1), a child shall be deemed to have been dependent upon his parent employee if the conditions set forth in section 402(d) (3), (4), or (9) of Title 42 are fulfilled. The provisions of paragraph (7) of section 402(d) of Title 42 (defining the terms "full-time student" and "educational institution") shall be applied by the Board in the administration of this subsection as if the references therein to the Secretary were references to the Board. A child who attains age twenty-two at a time when he is a full-time student (as defined in subparagraph (A) of paragraph (7) of section 402(d) of Title 42 and without the application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a degree from a four-year college or university shall be deemed (for purposes of determining his continuing or initial entitlement to an annuity under this subsection) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the educational institution in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(e)(1) No individual shall be entitled to an annuity under subsection (a)(1) of this section until he shall have ceased to render compensated service to any person, whether or not an employer as defined in section 231(a) of this title (but with the right to engage in other employment to the extent not prohibited by subdivision (3) or (4) of this subsection or by subsection (f) of this section). As used in this subsection, the term "compensated service" shall not include any service as an elected public official of the United States, a State, or any political subdivision of a State.

(2) An annuity under subsection (a)(1) of this section shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer and of the person, or persons, by whom he was last employed: *Provided, however,* That this requirement shall not apply to individuals mentioned in paragraphs (iv) and (v) of subsection (a)(1) of this section prior to attaining age sixty-five: *Provided further,* That, notwithstanding the provisions of the preceding proviso and of clause (i) of subsection (c)(1) of this section, an annuity shall be paid to the spouse of an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the preceding proviso: *And provided further,* That, notwithstanding the provisions of the first proviso of this subdivision and of clause (iii) of subsection (b)(1) of this section, a supplemental annuity shall be paid to an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the first proviso thereof.

(3) No annuity under subsection (a)(1) of this section or supplemental annuity under subsection (b)(1) of this section shall be paid with respect to any month in which an individual in receipt of an annuity or supplemental annuity thereunder shall render compensated service to an employer or to the last person, or persons, by whom he was employed prior to the date on which the annuity under subsection (a)(1) of this section began to accrue. Individuals receiving annuities under subsection (a)(1) of this section shall report to the Board immediately all such compensated service.

(4) No annuity under paragraph (iv) or (v) of subsection (a)(1) of this section shall be paid to an individual with respect to any month in which the individual is under age sixty-five and is paid more than $200 in earnings from employment or self-employment of any form: *Provided, however,* That for purposes of this subdivision, if a payment in any one calendar month is for accruals in more than one calendar month, such payment shall be deemed to have been paid in each of the months in which accrued to the extent accrued in such month. Any such individual under the age of sixty-five shall report to the Board any such payment of earnings for such employment or self-employment before receipt and acceptance of an annuity for the second month following the month of such payment. A deduction shall be imposed, with respect to any such individual who fails to make such report, in the annuity or annuities otherwise due the individual, in an amount equal to the amount of the annuity for each month in which he is paid such earnings in such employment or self-employment, except that the first deduction imposed pursuant to this sentence shall in no case exceed an amount equal to the amount of the annuity otherwise due for the first month with respect to which the deduction is imposed. If pursuant to the first sentence of this subdivision an annuity was not paid to an individual with respect to one or more months in any calendar year, and it is subsequently established that the total amount of such individual's earnings during such year as determined in accordance with that sentence (but exclusive of earnings for services described in subdivision (3)) did not exceed $2,400, the annuity with respect to such month or months, and any deduction imposed by reason of the failure

to report earnings for such month or months under the third sentence of this subdivision, shall then be payable. If the total amount of such individual's earnings during such year (exclusive of earnings for services described in subdivision (3)) is in excess of $2,400, the number of months in such year with respect to which an annuity is not payable by reason of such first and third sentences shall not exceed one month for each $200 of such excess, treating the last $100 or more of such excess as $200; and if the amount of the annuity has changed during such year, any payments of annuities which become payable solely by reason of the limitations contained in this sentence shall be made first with respect to the month or months for which the annuity is larger.

(5) The annuity of a spouse under subsection (c) of this section shall, with respect to any month, be subject to the same provisions of this subsection as the individual's annuity. In addition, the annuity of a spouse under subsection (c) of this section shall not be payable for any month if the individual's annuity under subsection (a)(1) of this section is not payable for such month by reason of the provisions of this subsection.

(f)(1) That portion of the individual's annuity as is computed under section 231b(a) of this title on the basis of (A) his compensation and years of service subsequent to December 31, 1974, and (B) his wages and self-employment income derived from employment and self-employment under the Social Security Act and that portion of the individual's annuity as is computed under section 231b(h) of this title shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such annuity were a monthly insurance benefit under that Act: *Provided, however,* That the provisions of this subdivision shall be applicable to the annuity of an individual only if such individual would be fully insured under the Social Security Act on the basis of wages and self-employment income derived from employment and self-employment under that Act and on the basis of compensation derived from service as an employee after December 31, 1974, if such service as an employee had been included in the term "employment" as defined in that Act. Any person in receipt of an annuity subject to deduction under this subsection shall report to the Board the receipt of excess earnings as defined in paragraph (3) of section 203(f) of the Social Security Act.

(2) That portion of the spouse's annuity under subsection (c) of this section which is derived from the portion of the individual's annuity subject to deductions under subdivision (1) and that portion of the spouse's annuity as is computed under section 231c(e) of this title shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such spouse's annuity were a monthly insurance benefit under that Act. In addition, such portion of the spouse's annuity shall be subject to deductions if the individual's annuity is subject to deductions under subdivision (1) in the same manner as if such portion of such spouse's annuity were a monthly insurance benefit under the Social Security Act.

(g)(1) No annuity shall be paid to a survivor under subsection (d) of this section with respect to any month in which such survivor renders service for compensation as an employee of an employer. Survivors receiving annuities under subsection (d) of this section shall report to the Board immediately all such service for compensation.

(2) Deductions, in amounts and at such time or times as the Board shall determine, shall be made from any payments to which a survivor is entitled under subsection (d) of this section until the total of such deductions equals such survivor's annuity under that subsection for any month, if for such month such survivor is under the age of seventy-two and is charged with excess earnings under section 403(f) of Title 42 or, having engaged in any activity outside the United States would be charged under such section 403(f) of Title 42 with any excess earnings derived from such activity if it had been an activity within the United States. For purposes of this subdivision the Board shall have the authority to take such actions and to make such determinations and such suspensions of payment of benefits in the manner and to the extent that the Secretary of Health, Education, and Welfare would be authorized to take or to make under section 403(h)(3) of Title 42 if the survivors were receiving the annuities to which this subdivision applies under section 402 of Title 42: *Provided, however,* That in determining a survivor's excess earnings for a year for the purposes of this subdivision there shall not be included his income from employment or self-employment during months beginning with the month with respect to which he ceases to be qualified for an annuity. Survivors receiving annuities under subsection (d) of this section shall report to the Board the receipt of excess earnings described in this subdivision.

(h)(1) In the event military service credited under section 231b(i)(2) of this title is or has been used as the basis or as a partial basis for a pension, disability compensation, or any other gratuitous benefits payable on a periodic basis under any other Act of Congress, any annuity of an individual under subsection (a)(1) of this section which is based in part on such military service shall be reduced, with respect to a calendar month for all or part of which such other benefit is also payable, by (i) the proportion which the number of years of service by which such military service increases the years of service bears to the total years of service, or (ii) the aggregate amount of such pension or other benefit with respect to that month, whichever would result in the smaller reduction: *Provided, however,* That in no case shall the reduction under this subdivision operate to reduce the annuity of an individual under subsection (a)(1) of this section below the amount it would have been if military service had not been included in the individual's years of service. If the annuity of an individual under subsection (a)(1) of this section is reduced for any month by reason of this subdivision, any annuity payable to the spouse of such individual for such month under subsection (c) of this section shall be reduced proportionately.

(2) The supplemental annuity provided an individual by subsection (b) of this section shall, with respect to any month, be reduced by the amount of the supplemental pension, attributable to the employer's contribution, that such individual is entitled to receive for that month under any other supplemental pension plan: *Provided, however,* That the maximum of such reduction shall be equal to the amount of the supplemental annuity less any amount by which the supplemental pension is reduced by reason of the supplemental annuity.

(3) If a spouse entitled to an annuity under subsection (c) of this section or a survivor entitled to an annuity under subsection (d) of this section for any month is also entitled to annuity under subsection (a)(1) of this section for such month, the annuity under subsection (c) or (d) of this section shall be reduced, but not below zero, by an amount equal to the annuity under subsection (a)(1) of this section: *Provided, however,* That the provisions of this subdivision shall not apply if either the spouse or survivor or the individual upon whose earnings record the spouse's annuity under subsection (c) or (d) of this section is based rendered service as an employee to an employer, or as an employee representative, prior to January 1, 1975.

(4) If an annuitant is entitled to more than one annuity under subsections (c) and (d) of this section for a month, such annuitant shall be entitled to only the larger of such annuities for such month, except that, if such annuitant so elects, he shall instead be entitled to only the smaller of such annuities for such month. (Aug. 29, 1935, ch. 812, § 2, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1312.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (f), is classified to section 301 et seq. of Title 42, The Public Health and Welfare.

Section 203 of the Social Security Act and section 203(f) of the Social Security Act, referred to in subsec. (f), are classified to sections 403 and 403(f) of Title 42.

PRIOR PROVISIONS

A prior section 2 of act Aug. 29, 1935, set out as section 228b of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section 602(a)–(d) of Pub. L. 93–445 provided that:

"(a) The provisions of title I of this Act [this subchapter] shall become effective on January 1, 1975, except as otherwise provided herein: *Provided, however,* That annuities awarded under section 2 of the Railroad Retirement Act of 1974 [this section] on the basis of an application therefor filed with the Board on or after such date may, subject to the limitations prescribed in section 5(a) of such Act [section 231d(a) of this title], begin prior to such date, except that no annuity under paragraph (ii) of section 2(a)(1) of such Act [subsec. (a)(1) of this section] shall begin to accrue to a man prior to July 1, 1974.

"(b) The provision of section 1(o) of the Railroad Retirement Act of 1974 [section 231(o) of this title] which provides that a 'current connection with the railroad industry' will not be broken by 'employment with the Department of Transportation, the Interstate Commerce Commission, the National Mediation Board, or the Railroad Retirement Board' shall not be applicable (A) for purposes of paragraph (iv) of section 2(a)(1) of such Act [subsec. (a)(1)(iv) of this section], to an individual who became disabled, as provided for purposes of such paragraph, prior to January 1, 1975, (B) for purposes of section 2(b)(1) of such Act [subsec. (b)(1) of this section], to an individual whose annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [subsec. (a)(1) of this section] first began to accrue prior to January 1, 1975, and (C) for purposes of section 2(d)(1) [subsec. (d)(1) of this section] of such Act, to a survivor of a deceased employee if such employee died prior to January 1, 1975.

"(c) The provisions of clause (i)(B) and clause (ii)(B) of section 2(c)(1) of the Railroad Retirement Act of 1974 [subsec. (c)(1) of this section] shall not be applicable to the spouse of an individual if (A) such individual will have completed thirty years of service and will have been awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [subsec. (a)(1) of this section] which first began to accrue prior to July 1, 1974, or (B) such individual will have completed less than thirty years of service and will have been awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [subsec. (a)(1) of this section] which first began to accrue prior to January 1, 1975. For purposes of the entitlement of the spouse of an individual described in clause (A) or (B) of the preceding sentence to an annuity under such section 2(c)(1) [subsec. (c)(1) of this section], the provisions of clause (i)(B) of such section 2(c)(1) [subsec. (c)(1) of this section] shall be deemed to read: '(B) has attained the age of 65'.

"(d) The provisions of section 2(b)(1) of the Railroad Retirement Act of 1974 [subsec. (b)(1) of this section] which permit an individual to become entitled to a supplemental annuity thereunder if he 'has attained age 60 and completed thirty years of service' shall not be applicable to an individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [subsec. (a)(1) of this section] which first began to accrue prior to July 1, 1974."

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly annuity or pension payment under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 231, 231b to 231f, 231m to 231o, 231r of this title; title 26 section 3221; title 42 sections 402, 405, 416.

§ 231b. Computation of annuities.

(a)(1) The annuity of an individual under section 231a(a)(1) of this title shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the old-age insurance benefit or disability insurance benefit to which such individual would have been entitled under the Social Security Act if all of his or her service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection, individuals entitled to an annuity under paragraph (ii) of section 231a(a)(1) of this title shall, except for purposes of recomputations in accordance with the provisions of section 415(f) of Title 42, be deemed to have attained age 65, and individuals entitled to an annuity under paragraph (iv) or (v) of such section 231a(a)(1) of this title shall be deemed to be entitled to a disability insurance benefit under section 423 of Title 42.

(b)(1) The amount of the annuity of an individual provided under subsection (a) of this sec-

tion shall be increased by an amount equal to (A) the amount of the annuity to which such individual would have been entitled (without regard to the requirement that an individual's years of service be ten or more) under section 2(a)(1) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, on the basis of his compensation and years of service prior to January 1, 1975, deeming such individual (i) to be eligible for such an annuity and (ii) to be entitled to no other benefit under either that Act or the Social Security Act except a benefit under the Social Security Act in the amount computed in accordance with the provisions of subclause (ii) of clause (C) of subsection (h)(1) or (h)(2) of this section, minus (B) the amount of the old-age insurance benefit to which such individual would have been entitled (before any deductions on account of work and subject to the last sentence of this subdivision) under the Social Security Act as in effect on December 31, 1974, if all his service as an employee after December 31, 1936, and before January 1, 1975, were included in the term "employment" as defined in the Act, and if such individual (i) were age 65 and otherwise eligible for such a benefit and (ii) had no wages or self-employment income under the Act other than wages derived from service as an employee after December 31, 1936, and before January 1, 1975. For purposes of computing amounts under clause (A) of this subdivision, the Board shall have the authority to approximate the effect of the reductions prescribed by sections 3(a)(2) and 3(a)(3) of the Railroad Retirement Act of 1937 in cases where the individual is entitled to a benefit under subsection (h)(1) or (h)(2) of this section. For purposes of this subdivision, 18 "benefit computation years" shall be used in calculating an individual's "average monthly wage", except in computing increases in amounts determined under clause (A) of this subdivision pursuant to section 3(a)(6) of the Railroad Retirement Act of 1937.

(2) The amount computed under subdivision (1) of this subsection shall be increased by 65 per centum of the percentage increase obtained by comparing the unadjusted Consumer Price Index for the month of September 1976 with the unadjusted Consumer Price Index for the September immediately preceding the earlier of (A) the calendar year in which the individual's annuity under section 231a(a)(1) of this title begins to accrue or (B) the calendar year 1981.

(c) If an individual entitled to an annuity under section 231a(a)(1) of this title will have rendered service as an employee to an employer, or as an employee representative, subsequent to December 31, 1974, the amount of the annuity of such individual provided under the preceding subsections of this section shall be increased by $1.50 for each of the first ten years of service that the individual has prior to January 1, 1975, and by $1.00 for each year of service prior to January 1, 1975, that the individual has in excess of ten years.

(d)(1) The amount of the annuity of an individual provided under the preceding subsections of this section shall be increased according to the following formula:

$$I=Y\ (.005A+4)$$

(2) The amount computed under subdivision (1) of this subsection shall be increased according to the following formula:

$$I=2.6YC$$

(3) The amount computed under subdivisions (1) and (2) of this subsection shall be further increased according to the following formula:

$$I=.005Y[.65BC-(B-D)]$$

In no event shall this subdivision result in a decrease in the amounts computed under subdivisions (1) and (2).

(4) For purposes of the formulae set forth in this subsection:

"I" represents the amount of increase in dollars;

"A" represents the employee's average monthly compensation for service after 1974;

"Y" represents the number of years of service of the employee after 1974;

"C" represents the percentage increase (converted to a decimal fraction) obtained by comparing the unadjusted Consumer Price Index for the month of September 1976 with the unadjusted Consumer Price Index for the September immediately preceding the earlier of the calendar year in which the individual's annuity under section 231a(a)(1) of this title begins to accrue, or the calendar year 1981;

"B" represents the employee's average monthly compensation for his years of service after 1974 (disregarding, for this purpose, compensation for any month after 1980 in excess of one-twelfth of the maximum taxable "wages" as defined in section 3121 of Title 26 for the calendar year 1980);

"D" represents the employee's average monthly compensation for his years of service after 1974 (disregarding, for this purpose, compensation for any month after 1976 in excess of one-twelfth of the maximum taxable "wages" as defined in section 3121 of Title 26 for the calendar year 1976).

(e) The supplemental annuity of an individual under section 231a(b) of this title shall be $23 plus an additional amount of $4 for each year of service that the individual has in excess of 25 years, but in no case shall the supplemental annuity exceed $43.

(f)(1) If the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section would, before any reductions on account of age, before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act, and disregarding any increases in such total amount which become effective after the date on which such begins to accrue, exceed an amount equal to the sum of individual's annuity under section 231a(a)(1) of this title (A) 100 per centum of his "final average monthly compensation" up to an amount equal to 50 per centum of one-twelfth of the maximum annual taxable "wages" (as defined in section 3121 of Title 26) for the calendar year in which such individual's annuity under section 231a(a)(1) of this title begins to accrue, plus (B) 80

per centum of so much of his "final average monthly compensation" as exceeds 50 per centum of one-twelfth of the maximum annual taxable "wages" (as defined in section 3121 of Title 26) for the calendar year in which such individual's annuity under section 231a(a)(1) of this title begins to accrue, the supplemental annuity of such individual first, and then, if necessary, the annuity amount of such individual as computed under subsections (b), (c), and (d) of this section, shall be reduced until such total amount of such individual's annuity and supplemental annuity equals such sum or until such supplemental annuity and such annuity amount computed under subsections (b), (c), and (d) of this section are reduced to zero, whichever occurs first: *Provided, however,* That the provisions of this subdivision shall not operate to reduce the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section below $1,200. For purposes of this subdivision, the "final average monthly compensation" of an individual shall be determined by dividing the total compensation received by such individual in the two calendar years, consecutive or otherwise, in which he was credited with the highest total compensation during the ten-year period ending with December 31 of the year in which such individual's annuity under section 231a(a)(1) of this title begins to accrue by 24. For purposes of this subdivision, the term "compensation" shall include "compensation" as defined in section 231(h) of this title, "wages" as defined in section 409 of Title 42, "self-employment income" as defined in section 411(b) of Title 42, and wages deemed to have been paid under section 417 or 429 of Title 42 on account of military service: *Provided, however,* That in no case shall the compensation with respect to any calendar month exceed the limitation on the compensation for such month prescribed in subsection (j) of this section. Wages and self-employment income included as compensation for purposes of this subdivision shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the calendar quarter in which credited, in the case of wages, or in equal proportions with respect to all months in the calendar year in which credited, in the case of self-employment income.

(2) If, in the case of an individual whose annuity under section 231a(a)(1) of this title began to accrue prior to January 1, 1983, the annuity (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act and disregarding any amount provided by subsection (h) of this section) plus the supplemental annuity to which such individual is entitled for any month under this subchapter, together with the annuity, if any, of the spouse of such individual (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act and disregarding any amount provided by section 231c(e) of this title), before any reductions under the provisions of section 231a(f) of this title is less than the total amount which would have been payable to such individual and his spouse for such month, on the basis of the individual's compensation and years of service, under the provisions of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, disregarding, for purposes of the computations under such Railroad Retirement Act of 1937 compensation for any month after December 31, 1974, in excess of one-twelfth of the maximum annual taxable "wages" (as defined in section 3121 of Title 26) for the calendar year 1974, the annuity of such individual and the annuity of such spouse, if any, shall be increased, without regard to the provisions of subdivision (1) of this subsection, proportionately so as to equal such total amount. For the purpose of computing amounts under this subdivision, the Board shall have the authority to approximate the effect of the reductions prescribed by sections 3(a)(2) and 3(a)(3) of the Railroad Retirement Act of 1937. For purposes of computing amounts payable under the Railroad Retirement Act of 1937, any increases in the amounts determined under the first proviso of section 3(e) of such Act which would have become effective after December 31, 1974, shall be disregarded.

(3) If for any month in which an annuity accrues and is payable under this subchapter the annuity to which an individual is entitled under this subchapter (or would have been entitled except for a reduction pursuant to a joint and survivor election), together with the annuity, if any, of the spouse of such individual, is less than the total amount, or the additional amount, which would have been payable to all persons for such month under the Social Security Act if such individual's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act, such annuity or annuities shall be increased proportionately to such total amount, or such additional amount: *Provided, however,* That if an annuity accrues to an individual or a spouse for a part of a month, the amount payable for such part of a month under this subdivision shall be one-thirtieth of the amount payable under this subdivision for an entire month, multiplied by the number of days in such part of a month. For purposes of this subdivision, (i) persons not entitled to an annuity under section 231a of this title shall not be included in the computation under this subdivision except a spouse who could qualify for an annuity under section 231a(c) of this title if the individual from whom the spouse's annuity under this subchapter would derive had attained age 60 or 62, as the case may be, and such individual's children who meet the definition as such contained in section 416(e) of Title 42; (ii) after an annuity has been certified for payment and this subdivision was inapplicable after allowing for any waiting period under section 423(c)(2) of Title 42, and after having considered the inclusion of all persons who were then eligible for inclusion in the computation under this subdivision, or was then applicable but later became inapplicable, any recertification in such annuity under this subdivision shall not take into account persons not entitled to an annuity under section 231a of this title except a spouse who could qualify for an annuity under section 231a(c) of this title when she attains age 60 or 62, as the case may

be, if the individual from whom the spouse's annuity would derive had attained age 60 or 62, as the case may be, and who was married to such individual at the time he applied for his annuity; and (iii) in computing the amount to be paid under this subdivision the only benefits under title II of the Social Security Act which shall be considered shall be those to which the persons included in the computation are entitled.

(g) Those portions of the annuity of an individual as are computed under subsections (b) and (d) of this section shall, if such individual's annuity under section 231a(a)(1) of this title began to accrue on or before the date on which the applicable increase under this subsection becomes effective, be increased by 32.5 per centum of the percentage increase, if any (rounded to the nearest one-tenth of 1 percent), obtained by comparing (A) the unadjusted Consumer Price Index for the calendar quarter ending March 31, 1977, with such index for the calendar quarter ending March 31, 1976, (B) the unadjusted Consumer Price Index for the calendar quarter ending March 31, 1978, with the higher of (i) such index for the calendar quarter ending March 31, 1977, or (ii) such index for the calendar quarter ending March 31, 1976, (C) the unadjusted Consumer Price Index for the calendar quarter ending March 31 1979, with the highest of (i) such index for the calendar quarter ending March 31, 1978, (ii) such index for the calendar quarter ending March 31, 1977, or (iii) such index for the calendar quarter ending March 31, 1976, and (D) the unadjusted Consumer Price Index for the calendar quarter ending March 31, 1980, with the highest of (i) such index for the calendar quarter ending March 31, 1979, (ii) such index for the calendar quarter ending March 31, 1978, (iii) such index for the calendar quarter ending March 31, 1977, or (iv) such index for the calendar quarter ending March 31, 1976. The unadjusted Consumer Price Index for any calendar quarter shall be the arithmetical mean of such index for the three months in such quarter. The increases provided under clauses (A), (B), (C), and (D) of this subsection shall be effective on June 1, 1977, June 1, 1978, June 1, 1979, and June 1, 1980, respectively.

(h)(1) The amount of the annuity provided under subsections (a) through (d) of this section of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 231a (a)(1) of this title began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(2) The amount of the annuity provided under subsections (a) through (d) of this section to an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act as of December 31 of the calendar year prior to 1975 in which he last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this subchapter, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as

an employee under this subchapter and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(3) The amount of the annuity provided under subsections (a) through (d) of this section of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 231a(a)(1) of this title began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) will have completed ten years of service prior to January 1, 1975, and is the wife, husband, widow, or widower of a person who will have been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the smaller of (C) the wife's, husband's, widow's, or widower's insurance benefit to which such individual would have been entitled, upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such person's wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, or (D) the primary insurance amount to which such individual would have been entitled upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such individual's wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(4) The amount of the annuity provided under subsections (a) through (d) of this section of an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (3) of this subsection, but (B) will have completed ten years of service prior to January 1, 1975, and is the wife, husband, widow, or widower of a person who will have been permanently insured under the Social Security Act as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the smaller of (C) the wife's, husband's, widow's, or widower's insurance benefit to which such individual would have been entitled, upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such person's wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last performed service as an employee under this subchapter or (D) the primary insurance amount to which such individual would have been entitled upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such individual's wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last performed service as an employee under this subchapter and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(5) The amount computed under subdivision (1), (2), (3), or (4) of this subsection shall be increased by the same percentage, or percentages, as benefits under the Social Security Act are increased, or would have been increased had there been no general benefit increases under the Social Security Act, pursuant to the automatic cost-of-living provisions of section 215(i) of that Act during the period from January 1, 1975, to the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue.

(i)(1) The "years of service" of an individual shall include all his service subsequent to December 31, 1936.

(2) The "years of service" of an individual shall also include his voluntary or involuntary military service, within or without the United States, during any war service period: *Provided, however,* That such military service shall be included only if, prior to the beginning of his military service and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable under this subchapter, or lost time as an employee for which he received remuneration, or was serving as an employee representative: *Provided further,* That such military service shall be included only subject to and in accordance with the provisions of subdivisions (1) and (3) of this subsection in the same manner as though military service were service rendered as an employee: *And provided further,* That such military service rendered after December 1956 shall not be included with respect to any month if (A) any benefits are payable for that month under the Social Security Act on the basis of such individual's wages and self-employment income, (B) such military service was included in the computation of such benefits, and (C) the inclusion of such military service in the computation of such benefits resulted (for that month) in benefits not otherwise payable or in an increase in the benefits otherwise payable: *And provided further,* That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

(3) The "years of service" of an individual who was an employee on August 29, 1935, shall, if the total number of his "years of service" as determined

under subdivisions (1) and (2) is less than thirty, also include his service prior to January 1, 1937, but not so as to make his total years of service exceed thirty: *Provided, however,* That with respect to any such individual wno rendered service to any employer subsequent to December 31, 1936, and who on August 29, 1935, was not an employee of an employer conducting the principal part of its business in the United States, no greater proportion of his service rendered prior to January 1, 1937, shall be included, in his "years of service" than the proportion which his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this subchapter) for service subsequent to December 31, 1936, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this subchapter) for service rendered anywhere to an employer subsequent to December 31, 1936. Where the "years of service" include only part of the service prior to January 1, 1937, the part included shall be taken in reverse order beginning with the last calendar month of such service.

(j) The "average monthly compensation" shall be the average compensation paid to an employee with respect to calendar months included in his "years of service", except (1) that with respect to service prior to January 1, 1937, the monthly compensation shall be the average compensation paid to an employee with respect to calendar months included in his years of service in the years 1924–1931, and (2) the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the forms of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940 through August 1941: *Provided, however,* That where service in the period 1924 through 1931 in the one case, or in the period September 1940 through August 1941 in the other case, is, in the judgment of the Board, insufficent to constitute a fair and equitable basis for determining the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month's compensation in excess of $300 for any month before July 1, 1954, or in excess of $350 for any month after June 30, 1954, and before June 1, 1959, or in excess of $400 for any month after May 31, 1959, and before November 1, 1963, or in excess of $450 for any month after October 31, 1963, and before October 1, 1965, or in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of Title 26, whichever is greater, for any month after September 30, 1965, shall be recognized. If the employee earned compensation in service after June 30, 1937, and after the last day of the calendar year in which he attained age sixty-five, such compensation and service shall be disregarded in computing the average monthly compensation if the result of taking such compensation into account in such computation would be to diminish his annuity. If the "average monthly compensation" computed under this subsection is not a multiple of $1, it shall be rounded to the next lower multiple of $1. Where an employee claims credit for months of service rendered within two years prior to his retirement from the service of an employer, with respect to which the employer's return pursuant to section 231h of this title has not been entered on the records of the Board before the employee's annuity could otherwise be certified for payment, the Board may, in its discretion (subject to subsequent adjustment at the request of the employee) include such months in the computation of the annuity without further vertification and may consider the compensation for such months to be the average of the compensation for months in the last period for which the employer has filed a return of the compensation of such employee and such return has been entered on the records of the Board.

(k) The annuity of an individual who shall have been an employee representative shall be determined in the same manner and with the same effect as if the employee organization by which he shall have been employed were an employer.

(l) In cases where an annuity awarded under paragraph (iii) of section 231a(a)(1) or under section 231a(c)(2) of this title is increased either by a change in the law or by a recomputation, the reduction for the increase in the anunity[1] shall be determined separately and the period with respect to which the reduction applies shall be determined as if such increase were a separate annuity payable for and after the first month for which such increase is effective.

(m) The annuity of any individual under subsection (a) of this section for any month shall be reduced, but not below zero, by the amount of any monthly benefit payable to that individual for that month under title II of the Social Security Act (Aug. 29, 1935, ch. 812, § 3, as added Oct. 16, 1974, Pub. L. 93–445, title I. § 101, 88 Stat. 1319.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a), (b), (f), (g) and (i) is classified to section 301 et seq. of Title 42, The Public Health and Welfare.

Title II of the Social Security Act, referred to in subsecs. (f)(3) and (m), is classified to section 401 et seq. of Title 42.

Section 215(i) of that Act, referred to in subsec. (h)(5), means section 215(i) of the Social Security Act, which is classified to section 415(i) of Title 42.

The Railroad Retirement Act of 1937, referred to in subsec. (f)(2), is classified to section 228a et seq. of this title.

Sections 2(a)(1), 3(a)(2), (a)(3) and (a)(6) of the the Railroad Retirement Act of 1937, referred to in text, are classified to sections 228b(b)(1), 228c(a)(2), (a)(3) and (a)(6) of this title.

[1] So in original.

PRIOR PROVISIONS

A prior section 3 of act Aug. 29, 1935, set out as section 228c of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93-445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93-445, set out as a note under section 231a of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly annuity or pension payment under this subchapter, see section 702 of Pub. L. 94-12, set out as a note under section 402 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 231, 231a, 231c, 231e, 231f, 231n, 231r of this title; title 42 sections 405, 410.

§ 231c. Computation of spouse and survivor annuities.

(a)(1) The annuity of a spouse of an individual under section 231a (c) of this title shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection, spouses entitled to annuity under clause (B) of paragraph (ii) of section 231a(c)(1) of this title shall be deemed to have attained age 65.

(b) The amount of the annuity of a spouse of an individual provided under subsection (a) of this section shall be increased by an amount equal to 50 per centum of that portion of the individual's annuity as is computed under subsections (b), (c), and (d) of section 231b of this title: *Provided, however,* That if the spouse is entitled to an annuity amount provided by subsection (e)(1) or (e)(2) of this section, the amount of such spouse's annuity provided by the preceding provisions of this subsection shall be reduced by the amount by which the amount computed in accordance with the provisions of clause (C) of subsection (e)(1) or (e)(2) of this section was increased by the Social Security Amendments of 1965, 1967, and 1969, disregarding (A) the amount of any such increase resulting from the Social Security Amendments of 1967 equal to, or less than, the excess of $5 over 5.8 per centum of the lesser of (i) the amount computed under clause (C) of subsection (e)(1) or (e)(2) of this section before any increases derived from legislation enacted after the Social Security Amendments of 1967 or (ii) the amount of the spouse's annuity to which such spouse would have been entitled under section 2(e) of the Railroad Retirement Act of 1937, without regard to section 3(a)(2) of that Act or to increases derived from legislation enacted after 1968 and before any reduction on account of age, on the basis of the individual's compensation and years of service prior to January 1, 1975, and (B) the amount of any such increase resulting from the Social Security Amendments of 1969 equal to, or less than, $5: *Provided further,* That if the spouse is entitled to an annuity under section 231a(a)(1) of this title, the amount of the annuity of such spouse under this subsection shall, subject to the third proviso of this subsection, be increased by an amount equal to the amount by which the amount of the annuity of such spouse provided under subsection (a) of this section was reduced by reason of the provisions of subsection (i)(2) of this section: *And provided further,* That if the total of (A) the amount of the spouse's annuity provided under subsection (a) of this section (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act), or, in the case of a spouse entitled to an annuity under section 231a(a)(1) of this title or to an old-age insurance benefit or a disability insurance benefit under section 202 or 223 of the Social Security Act, the amount to which such spouse would be entitled under subsection (a) of this section if she or he were not entitled to an annuity under section 231a(a)(1) of this title or to an old-age insurance benefit or a disability insurance benefit under section 202 or 223 of the Social Security Act, plus (B) the amount of her or his annuity under this subsection would, with respect to any month, before any reductions on account of age, exceed 110 per centum of an amount equal to the maximum amount which could be paid to anyone, with respect to such month, as a wife's insurance benefit under section 202(b) of the Social Security Act, the amount of the annuity of such spouse under this subsection shall be reduced until the total of such annuity amounts equals 110 per centum of such amount. The Board shall have the authority to approximate the amount of any reduction prescribed by the first proviso of this subsection.

(c) If (A) the total amount of the annuity of a spouse of an individual as computed under the preceding subsections of this section as of the date on which the annuity of such individual under section 231a(a)(1) of this title began to accrue (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act) plus (B) the total amount of the annuity and supplemental annuity of the individual (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act) subject to the provisions of section 231b(f)(1) of this title would, before any reductions in the amounts specified in clauses (A) and (B) on account of age and disregarding any increases in such amounts which become effective after the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue, exceed the amount determined under clauses (A) and (B) of section 231b(f)(1) of this title, the portion of the annuity of such spouse determined under subsection (b) of this section as of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue shall be reduced until the sum of the amounts specified in clauses (A) and (B) of this subsection

equals the amount determined under clauses (A) and (B) of section 231b(f)(1) of this title or until such amount under subsection (b) of this section is reduced to zero, whichever occurs first. If, after such amount under subsection (b) of this section is reduced to zero, the sum of the remaining amounts specified in clauses (A) and (B) of this subsection still exceeds the amount determined under clauses (A) and (B) of section 231b(f)(1) of this title, the supplemental annuity of the individual first, and then, if necessary, the annuity amount of the individual computed under subsections (b), (c), and (d) of section 231b of this title as of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue, shall be reduced until the amounts specified in clauses (A) and (B) of this subsection equals the amount determined under clauses (A) and (B) of section 231b(f)(1) of this title or until such supplemental annuity and such annuity amount are reduced to zero, whichever occurs first. Notwithstanding the preceding provisions of this subsection, the provisions of this subsection shall not operate to reduce the total of the amounts specified in clauses (A) and (B) of this subsection below $1,200.

(d) That portion of the annuity of the spouse of an individual as is determined under subsection (b) and (c) of this section shall be increased by the same percentage, or percentages, as the individual's annuity is, or has been, increased pursuant to the provisions of section 231b(g) of this title.

(e)(1) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 231a(a)(1) of this title began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) such individual will have completed ten years of service prior to January 1, 1975, and such spouse will have been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the smaller of (C) the primary insurance amount to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of her or his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, or (D) the wife's or husband's insurance benefit to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, if such individual's service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act, if such individual had no wages or self-employment income under the Act other than wages derived from such service as an employee, and if such spouse were entitled to no other benefit under that Act: *Provided, however,* That the increase under the provisions of this subdivision shall not be less than 50 per centum of the portion of the annuity, if any, of such individual determined under the provisions of section 231b(h)(1) of this title prior to any increases under the provisions of section 231b(h)(5) of this title.

(2) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) such individual will have completed ten years of service prior to January 1, 1975, and such spouse will have been permanently insured under the Social Security Act as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee, shall be increased by an amount equal to the smaller of (C) the primary insurance amount to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his or her wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee or (D) the wife's or husband's insurance benefit to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, if such individual's service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act, if such individual had no wages or self-employment income under that Act other than wages derived from such service as an employee, and if such spouse were entitled to no other benefit under that Act: *Provided, however,* That the increase under the provisions of this subdivision shall not be less than 50 per centum of the portion of the annuity, if any, of such individual determined under the provisions of section 231b(h)(2) of this title prior to any increases under the provisions of section 231b(h)(5) of this title.

(3) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual is entitled to an amount determined under the proviisons of section 231b(h)(1) or 231b(h)(2) of this title and (B) such spouse is not entitled to an amount determined under the provisions of subdivision (1) or (2) of this subsection, shall be increased by an amount equal to 50 per centum of the portion of the annuity of such individual determined under the provisions of section 231b(h)(1) or 231b(h)(2) of this title prior to any increases under the provisions of section 231b(h)(5) of this title.

(4) The amount determined under the provisions of subdivision (1), (2), or (3) of this subsection shall be increased by the same percentage or percentages, as wife's and husband's insurance benefits under section 202 of the Social Security Act are increased, or would have been increased had there been no general benefit increases under the Social Security

Act, pursuant to the automatic cost-of-living provisions of section 215(i) of that Act, during the period from January 1, 1975, to the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue.

(f)(1) The annuity of a survivor of a deceased employee under section 231a(d) of this title shall be in an amount equal to the amount (before any deductions on account of work) of the widow's insurance benefit, widower's insurance benefit, mother's insurance benefit, parent's insurance benefit, or child's insurance benefit, whichever is applicable, to which he or she would have been entitled under the Social Security Act if such deceased employee's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection—

(i) a widow or widower or a parent who is entitled to an annuity based on age under section 231a(d)(1) of this title and who has not attained age 62 shall be deemed to be age 62: *Provided, however,* That the provisions of this paragraph shall not apply in the case of a widow or widower who was entitled to an annuity under section 231a(d)(1) of this title on the basis of disability for the month before the month in which he or she attained age 60, and

(ii) a widow or widower or a child who is entitled to an annuity under section 231a(d)(1) of this title on the basis of disability shall be deemed to be entitled to a widow's insurance benefit, a widower's insurance benefit, or a child's insurance benefit under the Social Security Act on the basis of disability.

(g) The annuity of a survivor of a deceased employee determined under subsection (f) of this section shall, with respect to any month, be increased by an amount equal to 30 per centum of the amount of the annuity (before any deductions on account of work) to which such survivor is entitled for such month under the provisions of subsection (f) of this section, or to which such survivor would have been entitled for such month under such subsection if such survivor were entitled to no other monthly benefit under section 231a of this title or under the Social Security Act: *Provided, however,* That, if a widow or widower of a deceased employee is not entitled to an annuity under section 231a(a)(1) of this title or to an old-age insurance benefit or a disability insurance benefit under the Social Security Act, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause the total of the annuity amounts to which such widow or widower is entitled (before any deductions on account of work) under this subsection and subsection (f) of this section to equal the total of the annuity amounts to which such widow or widower was entitled (or would have been entitled except for the provisions of sections 231a(e) and 231a(f) of this title) as a spouse under subsections (a) and (b) of this section (after any reduction on account of age) in the month preceding the employee's death: *Provided further,* That, if a widow or widower of a deceased employee is entitled to an annuity under section 231a(a)(1) of this title or to an old-age insurance benefit or a disability insurance benefit under the Social Security Act, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause (A) the total of the annuity amounts to which such widow or widower is entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act or subsection (i)(2) of this section but before any deductions on account of work) under this subsection and subsection (f) of this section to equal (B)(i) the total of the annuity amounts, if any, to which such widow or widower was entitled (or would have been entitled except for the provisions of sections 231a(e) and 231a(b) of this title) as a spouse under subsections (a) and (b) of this section (after any reduction on account of age) in the month preceding the employee's death less (ii), if such widow or widower is entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act but was not entitled to such a benefit in the month preceding the employee's death, the amount by which the annuity amount payable under subsection (a) of this section to such widow or widower as a spouse in the month preceding the employee's death would have been reduced by reason of section 202(k) or 202(q) of the Social Security Act if such widow or widower had been entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act in the month preceding the employee's death in an amount equal to the amount of such benefit at the time such benefit first began to accrue to such widow or widower.

(h)(1) The amount of the annuity of the widow or widower of a deceased employee determined under subsections (f) and (g) of this section, if such deceased employee will have completed ten years of service prior to January 1, 1975, and such widow or widower will have been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the amount, if any, by which (A) the sum of (i) the widow's or widower's insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act), on the basis of the deceased employee's remuneration and service prior to January 1, 1975, and (ii) the primary insurance amount to which such widow or widower would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of her or his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, exceeds (B) 130 per centum of the amount of the widow's or widower's insurance benefit to which such widow or widower would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of the deceased employee's wages and self-employ-

ment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and before January 1, 1975, if the deceased employees' service as an employee after December 31, 1936, and before January 1, 1975, had been included in such employment and if such widow or widower were entitled to no other monthly benefit under section 231a of this title or under the Social Security Act.

(2) The amount determined under the provisions of subdivision (1) of this subsection shall be increased by the same percentage, or percentages, as widow's and widower's insurance benefits under section 202 of the Social Security Act are increased, or would have been increased had there been no general benefit increase under the Social Security Act, pursuant to the automatic cost-of-living provisions of section 215(i) of that Act, during the period from January 1, 1975, to the earlier of the date of the deceased employee's death or the date on which the deceased employee's annuity under section 231a(a)(1) of this title began to accrue.

(i)(1) The annuity of any spouse under subsection (a) of this section for any month shall be reduced, but not below zero, by the amount of any wife's or husband's insurance benefit payable to such spouse for that month under title II of the Social Security Act.

(2) If a spouse entitled to an annuity under section 231a(c) of this title or a survivor entitled to an annuity under section 231a(d) of this title for any month is also entitled to an annuity under section 231a(a)(1) of this title for such month, the annuity amount of such spouse determined under subsection (a) of this section or of such survivor under subsection (f) of this section shall, after any reduction pursuant to subdivision (1) of this subsection, be reduced by the amount of the annuity of such spouse or such survivor determined under section 231b(a) of this title. (Aug. 29, 1935, ch. 812, § 4, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1327.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a), (b), (c), (e), (f), (g) is classified to section 301 et seq. of Title 42, The Public Health and Welfare.

The Social Security Amendments of 1965, 1967, and 1969, referred to in subsec. (b), are Pub. L. 89–97, July 30, 1965, 79 Stat. 286, Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, and Pub. L. 91–172, title X, Dec. 30, 1969, 83 Stat. 737, respectively. For their classification to the Code, see the Tables volume.

Sections 2(e) and 3(a)(2) of the Railroad Retirement Act of 1937, referred to in subsec. (b), are classified to sections 228b(e) and 228c(a)(2) of this title.

Title II of the Social Security Act, referred to in subsec. (i), is classified to section 401 et seq. of Title 42.

Sections 202, 202(b), 202(k), 202(q), 215, 215(i), and 223 of the Social Security Act, referred to in text, are classified to sections 402, 402(b), 402(k), 402(q), 415, 415(i) and 423 of Title 42.

Sections 3(e) and 5(a) of the Railroad Retirement Act of 1937, referred to in subsec. (h)(1), are classified to sections 228c(e) and 228e(a) of this title.

PRIOR PROVISIONS

A prior section 4 of act Aug. 29, 1935, set out as section 228c–1 of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly annuity or pension payment under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 231a, 231b, 231e, 231n, 231r of this title.

§ 231d. Annuity beginning and ending dates.

(a) An annuity under section 231a of this title shall begin with the month in which eligibility therefor was otherwise acquired, but—

(i) not earlier than the date specified in the application therefor;

(ii) not earlier than the first day of the twelfth month before the month in which the application therefor was filed; and

(iii) in the case of an applicant otherwise eligible for an annuity under section 231a(a)(1) or 231a(c) of this title not earlier than the date following the last day of compensated service of the applicant.

(b) An application for any payment under this subchapter shall be made and filed in such manner and form as the Board may prescribe. An application filed with the Board for an annuity under this subchapter shall, unless the applicant specifies otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this subchapter or the Social Security Act. An individual who was entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title for the month preceding the month in which he attained the age of 65, shall be deemed to have filed an application for an annuity under paragraph (i) of section 231a(a)(1) of this title on the date on which he attained age 65, and a widow or widower who was entitled to an annuity under section 231a(d)(1) of this title on the basis of disability for the month preceding the month in which she or he attained age 60, shall be deemed to have filed an application for an annuity under such section 231a(d)(1) of this title on the basis of age on the date on which she or he attained age 60.

(c)(1) An individual's entitlement to an annuity under paragraph (i), (ii), or (iii) of section 231a(a)(1) of this title or to a supplemental annuity under section 231a(b) of this title shall end with the month preceding the month in which he dies.

(2) An individual's entitlement to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title shall end on (A) the last day of the second month following the month in which he ceases to be disabled as provided for purposes of such paragraphs, (B) the last day of the month preceding the month in which he attains age 65 or (C) the last day of the month preceding the month in which he dies, whichever first occurs.

(3) The entitlement of a spouse of an individual to an annuity under section 231a(c) of this title shall end on the last day of the month preceding the month in which (A) the spouse or the individual dies, (B) the spouse and the individual are absolutely divorced, or (C) in the case of a wife who does not satisfy the requirements of clause (ii) (A) or (ii)(B) of section 231a(c)(1) of this title (other than a wife who is receiving such annuity by reason of an election under section 231a(c)(2) of this title), such wife no longer has in her care a child described in clause (ii)(C) of section 231a (c)(1) of this title, whichever first occurs.

(4) The entitlement of a widow or widower of a deceased employee to an annuity under paragraph (i) of section 231a(d)(1) of this title on the basis of age shall end on (A) the last day of the month preceding the month in which she or he dies or (B) the last day of the month preceding the month in which she or he remarries after the employee's death, whichever first occurs.

(5) The entitlement of a widow or widower of a deceased employee to an annuity under paragraph (i) of section 231a(d)(1) of this title on the basis of disability shall end on (A) the last day of the month preceding the month in which she or he dies, (B) the last day of the month preceding the month in which she or he remarries after the employee's death, (C) the last day of the second month following the month in which she or he ceases to be disabled as provided for purposes of such paragraph, or (D) the last day of the month preceding the month in which she or he attains age 60, whichever first occurs.

(6) The entitlement of a widow of a deceased employee to an annuity under paragraph (ii) of section 231a(d)(1) of this title shall end on (A) the last day of the month preceding the month in which she dies, (B) the last day of the month preceding the month in which she remarries after the employee's death, or (C) the last day of the month preceding the month in which she no longer has in her care a child described in clause (B) of such paragraph (ii) whichever first occurs.

(7) The entitlement of a child of a deceased employee to an annuity under paragraph (iii) of section 231a(d)(1) of this title shall end on (A) the last day of the month preceding the month in which he or she dies, (B) the last day of the month preceding the month in which he or she marries, (C) the last day of the month preceding the month in which he or she attains age 18 and does not meet the qualifications set forth in clause (B) or (C) of such paragraph (iii), (D) the last day of the month preceding (i) the month during no part of which he or she is a full-time student or (ii) the month in which he or she attains age 22, and does not meet the qualifications set forth in clause (A) or (C) of such paragraph (iii), or (E) the last day of the second month following the month in which he or she ceases to be disabled for purposes of such paragraph (iii) and does not meet the qualifications set forth in clause (A) or (B) of such paragraph (iii), whichever first occurs. A child whose entitlement to an annuity under paragraph (iii) of section 231a(d)(1) of this title terminated by reason of clause (E) of this subdivision because he or she ceased to be disabled and who again becomes disabled as provided in clause (C) of such paragraph (iii), may become reentitled to an annuity on the basis of such disability upon his or her application for such reentitlement. A child whose entitlement to an annuity under paragraph (iii) of section 231a(d)(1) of this title terminated with the month preceding the month in which he or she attained age 18, or with a subsequent month, may again become entitled to such an annuity (providing no event to disqualify the child has occurred) beginning with the first month thereafter in which he or she meets the qualifications set forth in clause (B) or (C) of such paragraph (iii), if he or she has filed an application for such reentitlement.

(8) The entitlement of a parent of a deceased employee to an annuity under paragraph (iv) of section 231a(d)(1) of this title shall end on the last day of the month preceding the month in which (A) such parent dies or (B) such parent remarries after the employee's death, whichever first occurs. (Aug. 29, 1935, ch. 812, § 5, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1332.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is classified to section 301 et seq. of Title 42, The Public Health and Welfare.

PRIOR PROVISIONS

A prior section 5 of act Aug. 29, 1935, set out as section 228e of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly annuity or pension payment under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of Title 42, The Public Health and Welfare.

§ 231e. Lump-sum payments.

(a)(1) Annuities under section 231a(a)(1) of this title and supplemental annuities under section 231 a(b) of this title which will have become due an individual but will not have been paid at the time of such individual's death shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and to have been living with such individual at the time of such individual's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of such individual, and to the extent that he or they will not have been reimbursed under subsection (b) of this section for having paid such expenses. If there be no person or persons so entitled, or if the total of such annuities exceeds the amount payable under this subdivision to such person or persons, such total, or the remainder thereof, as the case may be, shall be paid to the children, grandchildren, parents, or brothers and sisters of the deceased individual in

the same manner as if such annuities were a lump sum payable under subsection (c)(1) of this section.

(2) Annuities under section 231a(d) of this title which will have become due a survivor of an employee but will not have been paid at the time of such survivor's death shall be payable to the person, if any, who is determined by the Board to be such employee's widow or widower and to have been living with such employee at the time of the employee's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to the children, grandchildren, parents, or brothers and sisters of the deceased employee in the same manner as if such unpaid annuities were a lump sum payable under subsection (c)(1) of this section.

(3) Annuities under section 231a(c) of this title which will have become due a spouse of an individual but which will not have been paid at the time of such spouse's death shall be payable to the individual from whose employment such annuities derived and who will not have died before receiving payment of such annuities. If there be no such individual, such annuities shall be paid as provided in the last two sentences of subdivision (1) of this subsection as if such annuities were annuities due to an individual but unpaid at the time of such individual's death.

(4) Applications for accrued and unpaid annuities provided for in the preceding subdivisions of this subsection shall be filed prior to the expiration of two years after the death of the person to whom such annuities were originally due.

(5) If there is no person to whom all or any part of the payments described in subdivision (1), (2), or (3) can be made, such payment or part thereof shall escheat to the credit of the Railroad Retirement Account.

(6) For the purposes of this subsection and subsection (c) of this section, a widow or widower of an individual shall be deemed to have been living with the individual at the time of the individual's death if the applicable conditions set forth in section 416(h)(2) or (3) of Title 42, as in effect before 1957, are fullfilled.

(7) In determining for purposes of this subsection and subsections (c) and (d) of this section whether an applicant is the widow, widower, child, or parent of an employee as claimed, the rules set forth in section 416(h) of Title 42 shall be applied. In determining for purposes of this subsection and subsections (c) and (d) of this section whether an applicant is the grandchild, brother, or sister of an employee as claimed, the Board shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such employee was domiciled at the time of his death, or if such employee was not so domiciled in any State by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking personal property as a grandchild, brother, or sister shall be deemed such.

(b)(1) Upon the death of an individual who will have completed ten years of service prior to January 1, 1975, and will have had a current connection with the railroad industry at the time of his death, a lump-sum payment shall be made in accordance with the provisions of section 5(f)(1) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, in an amount, if any, which would have been payable under such section on the basis of (A) the individual's compensation after December 31, 1936, and prior to January 1, 1975, and (B) the individual's wages (as defined in section 209 of the Social Security Act) prior to January 1, 1975. Any lump sum payable under this subdivision shall be in an amount computed as if the individual had died on January 1, 1975.

(2) Upon the death of an individual who will not have completed ten years of service prior to January 1, 1975, but who (i) will have completed ten years of service at the time of his death, (ii) will have had a current connection with the railroad industry at the time of his death, and (iii) will have died leaving no widow, widower, child, or parent who would on proper application therefor be entitled to receive an annuity under section 231a(d) of this title for the month in which such death occurred, a lump-sum death payment shall be made in accordance with the provisions of section 202(i) of the Social Security Act in an amount equal to the amount which would have been payable under such section 202(i) if such individual's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act. If a lump sum would be payable to a widow or widower under this subdivision except for the fact that a survivor will have been entitled to receive an annuity for the month in which the individual will have died, but within one year after the individual's death there will not have accrued to survivors of the individual, by reason of his death, annuities which, after all deductions pursuant to sections 231a(g) and 231a(h) of this title, are equal to such lump sum, a payment equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions shall then nevertheless be made under this subdivision to the widow or widower to whom a lump sum would have been payable under this subdivision except for the fact that a monthly benefit under section 231a(d) of this title was payable for the month in which the individual died, if such widow or widower will not have died before receiving payment of such lump sum.

(c)(1) Whenever it shall appear, with respect to the death of an employee, that no benefits, or no further benefits (other than benefits payable to a widow, widower, or parent under either this subchapter or the Social Security Act upon attaining the age of eligibility therefor at a future date) will be payable under this subchapter or under the Social Security Act, a lump sum in an amount computed under subdivision (2) of this subsection shall be paid to such person or persons as the deceased employee may have designated by a writing filed with the Board prior to his or her death, or if there be no designation, to the following person (or, if more than one, in equal shares to the persons) whose relationship to the deceased employee will have been determined by the Board and who will not have died before receiving payment of the lump sum provided for in this subdivision—

(i) the widow or widower of the deceased employee who was living with such employee at the time of such employee's death; or

(ii) if there be no such widow or widower, to any child or children of such employee; or

(iii) if there be no such widow, widower, or child, to any grandchild or grandchildren of such employee; or

(iv) if there be no such widow, widower, child, or grandchild, to any parent or parents of such employee; or

(v) if there be no such widow, widower, child, grandchild, or parent, to any brother or sister of such employee; or

(vi) if there be no such widow, widower, child, grandchild, parent, brother, or sister, to the estate of such employee:

Provided, however, That if the employee is survived by a widow, widower, or parent who may upon attaining the age of eligibility be entitled to benefits under this subchapter or under the Social Security Act, such lump sum shall not be paid unless such widow, widower, or parent makes and files with the Board an irrevocable election, in such form as the Board may prescribe, to have such lump sum be paid in lieu of all benefits to which such widow, widower, or parent might otherwise become entitled under this subchapter on the basis of the deceased employee's compensation and years of service or under the Social Security Act on the basis of the deceased employee's wages from (A) employment with an employer as defined in section 231(a) of this title or (B) service as an employee representative as defined in section 231(c) of this title. Any election made and filed by a widow, widower, or parent pursuant to this subdivision shall be legally effective according to its terms.

(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to (A) the sum of 4 per centum of the deceased employee's compensation paid after December 31, 1936, and prior to January 1, 1947, plus 7 per centum of such employee's compensation paid after December 31, 1946, and before January 1, 1959, plus 7½ per centum of such employee's compensation paid after December 31, 1958, and before January 1, 1962, plus 8 per centum of such employee's compensation paid after December 31, 1961, and before January 1, 1966, plus an amount equal to the total of all employee taxes payable by such employee after December 31, 1965, and before January 1, 1975, under the provisions of section 3201 of Title 26 (excluding, for this purpose, the amount of the employee tax attributable to that portion of the tax rate derived from section 3101(b) of Title 26), plus one-half of 1 per centum of the compensation on which such taxes were payable, deeming the compensation attributable to creditable military service after June 30, 1963, and before January 1, 1975, to be taxable compensation, and one-half of the taxes payable by an employee representative under section 3211 of Title 26 to be employee taxes under section 3201 of Title 26, minus (B) the sum of all benefits paid to such employee, and to others deriving from such employee, during his or her life, or to others by reason of his or her death, under this subchapter, the Railroad Retirement Act of 1937, or the Social Security Act (excluding, for this purpose, payments to providers of services under section 231f(d) of this title or section 21 of the Railroad Retirement Act of 1937, any amounts by which that portion of the annuities provided the employee under section 231b(a) of this title or his spouse under section 231c(a) of this title were increased by reason of the employee's wages and self-employment income derived from employment and self-employment under the Social Security Act, that portion of the annuities provided the employee under section 231b(h) of this title or his spouse under section 231c(e) of this title, and so much of the benefits paid to the employee and to others deriving from him or her under the Social Security Act during his or her lifetime as would have been payable under that Act if such employee had not rendered service as an employee as defined in section 231(b) of this title). In computing compensation for purposes of this subdivision there shall be excluded compensation in excess of $300 for any month before July 1, 1954; compensation in excess of $350 for any month after June 30, 1954, and before June 1, 1959; compensation in excess of $400 for any month after May 31, 1959, and before November 1, 1963; compensation in excess of $450 for any month after October 31, 1963, and before October 1, 1965; and compensation in excess of (i) $450 or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of Title 26, whichever is greater, for any month after September 30, 1965.

(d)(1) Every individual who will have completed ten years of service at the time of his retirement or death, but does not meet the qualifications for an annuity amount determined under the provisions of section 231b(h)(1) or 231b(h)(2) of this title, shall, at the time his annuity under section 231a(a)(1) of this title begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 231a(a)(1) of this title, or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to the sum of (A) 1.5 per centum of so much of such individual's combined earnings for any calendar year after 1950 and before 1954 as is in excess of $3,600, plus (B) 2 per centum of so much of such individual's combined earnings for any calendar year after 1953 and before 1957 as is in excess of $4,200, plus (C) 2.25 per centum of so much of such individual's combined earnings for any calendar year after 1956 and before 1959 as is in excess of $4,200, plus (D) 2.5 per centum of so much of such individual's combined earnings for the calendar year 1959 as is in excess of $4,800, plus (E) 3 per centum of so much of such individual's combined earnings for each of the calendar years 1960 and 1961 as is in excess of $4,800, plus (F) 3.125 per centum of so

much of such individual's combined earnings for the calendar year 1962 as is in excess of $4,800, plus (G) 3.625 per centum of so much of such individual's combined earnings for any calendar year after 1962 and before 1966 as is in excess of $5,400, plus (H) 4.2 per centum of so much of such individual's combined earnings for the calendar year 1966 as is in excess of $6,600, plus (I) 4.4 per centum of so much of such individual's combined earnings for the calendar year 1967 as is in excess of $6,600, plus (J) 3.8 per centum of so much of such individual's combined earnings for the calendar year 1968 as is in excess of $7,800, plus (K) 4.2 per centum of so much of such individual's combined earnings for each of the calendar years 1969 and 1970 as is in excess of $7,800, plus (L) 4.6 per centum of so much of such individual's combined earnings for the calendar year 1971 as is in excess of $7,800, plus (M) 4.6 per centum of so much of such individual's combined earnings for the calendar year 1972 as is in excess of $9,000, plus (N) 4.85 per centum of so much of such individual's combined earnings for the calendar year 1973 as is in excess of $10,800, plus (O) 4.95 per centum of so much of such individual's combined earnings for the calendar year 1974 as is in excess of $13,200. For purposes of this subsection, the term "combined earnings" shall include "compensation" as defined in section 228a(h) of this title, "wages" as defined in section 409 of Title 42, and "self-employment" income as defined in section 411(b) of Title 42. (Aug. 29, 1935, ch. 812, § 6, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1334.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b) and (c), is classified to section 301 et seq. of Title 42, The Public Health and Welfare.

Sections 202(i) and 209 of the Social Security Act, referred to in subsec. (b), are classified to sections 402(i) and 409, respectively, of Title 42.

Sections 5(f)(1) and 21 of the Railroad Retirement Act of 1937, referred to in subsecs. (b) and (c), are classified to sections 228e(f)(1) and 228s–2, respectively, of this title.

PRIOR PROVISIONS

A prior section 6 of act Aug. 29, 1935, set out as section 228f of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly annuity or pension payment under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 352 of this title; title 42 sections 402, 405.

§ 231f. Railroad Retirement Board.

(a) This subchapter shall be administered by the Railroad Retirement Board established by the Railroad Retirement Act of 1937 as an independent agency in the executive branch of the Government and composed of three members appointed by the President, by and with the advice and consent of the Senate. Each member shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of the term and any member holding office pursuant to appointment under the Railroad Retirement Act of 1937 when this subchapter becomes effective shall hold office until the term for which he was appointed under such Railroad Retirement Act of 1937 expires. One member shall be appointed from recommendations made by representatives of the employees and one member shall be appointed from recommendations made by representatives of employers as defined in paragraph (i) of section 231(a)(1) of this title, in both cases as the President shall direct, so as to provide representation on the Board satisfactory to the largest number, respectively, of employees and employers concerned. One member, who shall be the chairman of the Board, shall be appointed without recommendation by either employers or employees and shall not be in the employment of or be pecuniarily or otherwise interested in any employer or organization of employees. Vacancies in the Board shall not impair the powers or affect the duties of the Board or of the remaining members of the Board, of whom a majority of those in office shall constitute a quorum for the transaction of business. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

(b)(1) The Board shall have and exercise all the duties and powers necessary to administer this subchapter. The Board shall take such steps as may be necessary to enforce such subchapter and make awards and certify payments. Decisions by the Board upon issues of law and fact relating to annuities or death benefits shall not be subject to review by any other administrative or accounting officer, agent, or employee of the United States.

(2) In the case of—

(A) an individual who will have completed ten years of service creditable under this subchapter,

(B) the wife or husband of such an individual,

(C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 231a of this title, and

(D) any other person entitled to benefits under title II of the Social Security Act on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry at the time of his death);

the Board shall provide for the payment on behalf of the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund of monthly benefits payable under title II of the Social Security Act which are certified by the Secretary to it for payment under the provisions of title II of the Social Security Act.

(3) If the Board finds that an applicant is entitled to an annuity or death benefit under the provisions of this subchapter then the Board shall make an award fixing the amount of the annuity or benefit, as the case may be, and shall certify the payment thereof as hereinafter provided; otherwise the application shall be denied. For purposes of this section, the Board shall have and exercise such of the powers, duties and remedies provided in subsections (a), (b), (d), and (n) of section 362 of this title as are not inconsistent with the express provisions of this subchapter. The Board is authorized to delegate to any member, officer, or employee of the Board any of the powers conferred upon the Board by this subchapter, excluding only the power to prescribe rules and regulations, including the power to make decisions on applications for annuities or other benefits: *Provided, however,* That any person aggrieved by a decision on his application for an annuity or other benefit shall have the right to appeal to the Board. Notice of a decision of the Board, or of an employee thereof, shall be communicated to the applicant in writing within thirty days after such decision shall have been made.

(4) The Board shall from time to time certify to the Secretary of the Treasury the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which it should be made, and the Secretary of the Treasury through the Division of Disbursements of the Treasury Department, and prior to audit by the General Accounting Office, shall make payment in accordance with the certification by the Board.

(5) The Board shall establish and promulgate rules and regulations to provide for the adjustment of all controversial matters arising in the administration of this subchapter. All rules, regulations, or decisions of the Board shall require the approval of at least two members, and they shall be entered upon the records of the Board, which shall be a public record.

(6) The Board shall gather, keep, compile, and publish in convenient form such records and data as may be necessary to assure proper administration of this subchapter, including subdivision (2) of this subsection. The Board shall have power to require all employers and employees and any officer, board, commission, or other agency of the United States to furnish such information and records as shall be necessary for the administration of this subchapter, including subdivision (2) of this subsection. The several district courts of the United States and the District Court of the United States for the District of Columbia shall have jurisdiction upon suit by the Board to compel obedience to any order of the Board issued pursuant to this section. The orders, writs, and processes of the District Court of the United States for the District of Columbia in such suits may run and be served anywhere in the United States. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. The Board shall make an annual report to the President of the United States to be submitted to Congress.

(7) The Secretary of Health, Education, and Welfare shall furnish the Board certified reports of wages, self-employment income, and periods of service and of other records in his possession, or which he may secure, pertinent to the administration of this subchapter. The Board shall furnish the Secretary of Health, Education, and Welfare certified reports of records of compensation and periods of service reported to it pursuant to section 231h of this title, of determinations under section 231a of this title, and of other records in its possession, or which it may secure, pertinent to subsection (c) of this section or to the administration of the Social Security Act as affected by section 231q of this title. Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided, however,* That if the Board or the Secretary of Health, Education, and Welfare receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence such recertification of such report shall be made as, in the judgment of the Board or the Secretary of Health, Education, and Welfare, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

(8) Any department or agency of the United States maintaining records of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the number of months of military service which such department or agency finds the individual to have had during any period or periods with respect to which the Board's request is made, the date and manner of entry into such military service, and the conditions under which such service was continued. Any department or agency of the United States which is authorized to make awards of pensions, disability compensation, or any other gratuitous benefits or allowances payable, on the periodic basis or otherwise, under any other Act of Congress on the basis of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the calendar months for all or part of which any such pension, compensation, benefit, or allowance is payable to, or with respect to, the individual, the amounts of any such pension, compensation, benefit, or allowance, and the military service on which such pension, compensation, benefit, or allowance is based. Any certification made pursuant to the provisions of this subdivision shall be conclusive on the Board: *Provided, however,* That if evidence inconsistent with any such certification is submitted, and the claim is in the course of adjudication or is otherwise open for such evidence, the Board shall refer such evidence to the department or agency which made the original certification and such department or agency shall make such recertification as in its judgment the evidence warrants. Such recertification, and any subsequent recertification, shall be conclusive, made in the same manner, and subject to the same conditions as an original certification.

(9) The Board shall maintain such offices, provide such equipment, furnishings, supplies, services, and facilities, and employ such individuals and provide

for their compensation and expenses as may be necessary for the proper discharge of its functions. All positions to which such individuals are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed or excepted therefrom. In the employment of such individuals under the civil service laws and rules the Board shall give preference over all others to individuals who have had experience in railroad service, if, in the judgment of the Board, they possess the qualifications necessary for the proper discharge of the duties of the positions to which they are to be appointed. For purposes of its administration of this subchapter or the Railroad Unemployment Insurance Act, or both, the Board may place, without regard to the numerical limitations contained in section 505 of the Classification Act of 1949, as amended, four positions in grade GS–16 of the General Schedule established by that Act, four positions in grade GS–17 of such schedule, and one position in grade GS–18 of such schedule.

(c)(1) Benefit payments determined by the Board to be payable under this subchapter shall be made from the Railroad Retirement Account, except that payments of supplemental annuities under section 231a(b) of this title shall be made from the Railroad Retirement Supplemental Account.

(2) At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board and the Secretary of Health, Education, and Welfare shall determine the amounts, if any, which if added to or subtracted from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would place each such Trust Fund in the same position in which it would have been if (A) service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act and in the Federal Insurance Contributions Act and (B) this subchapter had not been enacted. Such determination with respect to each such Trust Fund shall be made no later than June 15 following the close of the fiscal year. If, pursuant to any such determination, any amount is to be added to any such Trust Fund, the Board shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from the Railroad Retirement Account to such Trust Fund. If, pursuant to any such determination, any amount is to be subtracted from any such Trust Fund, the Secretary of Health, Education, and Welfare shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from such Trust Fund to the Railroad Retirement Account. Any amounts so certified shall further include interest (at the rate determined in subdivision (3) for the fiscal year under consideration) payable from the close of such fiscal year until the date of certification. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement Account from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, or the Federal Hospital Insurance Trust Fund or to any such Trust Fund from the Railroad Retirement Account, as the case may be, such amounts as, from time to time, may be determined by the Board and the Secretary of Health, Education, and Welfare pursuant to the provisions of this subdivision and certified by the Board or the Secretary of Health, Education, and Welfare for transfer from any such Trust Fund or from the Railroad Retirement Account.

(3) For purposes of subdivision (2), for any fiscal year, the rate of interest to be used shall be equal to the average rate of interest, computed as of May 31 preceding the close of such fiscal year, borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(d)(1) The Board shall, for purposes of this subsection, have the same authority to determine the rights of individuals described in subdivision (2) to have payments made on their behalf for hospital insurance benefits consisting of inpatient hospital services, posthospital extended care services, posthospital home health services, and outpatient hospital diagnostic services (all hereinafter referred to as "services") under section 226, and parts A and C of title XVIII, of the Social Security Act as the Secretary of Health, Education, and Welfare has under such section and such parts with respect to individuals to whom such sections and such parts apply. For purposes of section 231g of this title, a determination with respect to the rights of an individual under this subsection shall, except in the case of a provider of services, be considered to be a decision with respect to an annuity.

(2) Except as otherwise provided in this subsection, every person who—

(i) has attained age 65 and (A) is entitled to an annuity under this subchapter (B) would be entitled to such an annuity had he ceased compensated service and, in the case of a spouse, had such spouse's husband or wife ceased compensated service; or

(ii) has not attained age 65 and (A) has been entitled to an annuity under section 231a of this title, or under the Railroad Retirement Act of 1937 and section 231a of this title, or could have been includible in the computation of an annuity under section 231b(f)(3) of this title, for not less than 24 consecutive months and (B) could have been entitled for 24 consecutive calendar months, and could currently be entitled, to monthly insurance benefits under section 223 of the Social Security Act or under section 202 of that Act on the basis of disability if service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act and if an application for disability benefits had been filed,

shall be certified to the Secretary of Health, Education, and Welfare as a qualified railroad retirement beneficiary under section 226 of the Social Security Act.

(3) If an individual entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title would have been insured for disability insurance benefits as determined under section 223(c)(1) of the Social Security Act at the time such annuity began, he shall be deemed, solely for purposes of paragraph (ii) of subdivision (2), to be entitled to a disability insurance benefit under section 223 of the Social Security Act for each month, and beginning with the first month, in which he would meet the requirements for entitlement to such a benefit, other than the requirement of being insured for disability insurance benefits, if service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act and if an application for disability benefits had been filed.

(4) The rights of individuals described in subdivision (2) of this subsection to have payment made on their behalf for the services referred to in subdivision (1) but provided in Canada shall be the same as those of individuals to whom section 226 and part A of title XVIII of the Social Security Act apply, and this subdivision shall be administered by the Board as if the provisions of section 226 and part A of title XVIII of the Social Security Act were applicable, as if references to the Secretary of Health, Education, and Welfare were to the Board, as if references to the Federal Hospital Insurance Trust Fund were to the Railroad Retirement Account, as if references to the United States or a State included Canada or a subdivision thereof, and as if the provisions of sections 1862(a)(4), 1863, 1864, 1867, 1868, 1869, 1874(b), and 1875 were not included in such title. The payments for services herein provided for in Canada shall be made from the Railroad Retirement Account (in accordance with, and subject to, the conditions applicable under subsection (b) of this section, in making payment of other benefits) to the hospital, extended care facility, or home health agency providing such services in Canada to individuals to whom subdivision (2) of this subsection applies, but only to the extent that the amount of payments for services otherwise hereunder provided for an individual exceeds the amount payable for like services provided pursuant to the law in effect in the place in Canada where such services are furnished. For the purposes of section 231i of this title, any overpayment under this subdivision shall be treated as if it were an overpayment of an annuity.

(5) The Board and the Secretary of Health, Education, and Welfare shall furnish each other with such information, records, and documents as may be considered necessary to the administration of this subsection or section 226, and part A of title XVIII, of the Social Security Act.

(e) The Board is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Railroad Retirement Account, to the Railroad Retirement Supplemental Account, or to the Railroad Unemployment Insurance Account, or to the Board, or any member, officer, or employee thereof, for the benefit of such accounts or any activity financed through such accounts. Any such gift accepted pursuant to the authority granted in this subsection shall be deposited in the specific account designated by the donor or, if the donor has made no such specific designation, in the Railroad Retirement Account. (Aug. 29, 1935, ch. 812, § 7, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1338.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1937, referred to in text, is classified to section 228a et seq. of this title.

The Railroad Unemployment Insurance Act, referred to in text, is classified to section 351 et seq. of this title.

The Social Security Act, referred to in text, is classified to section 301 et seq. of Title 42, The Public Health and Welfare.

Title II of the Social Security Act, referred to in text, is classified to section 401 et seq. of Title 42.

Sections 202, 223 and 226 of the Social Security Act, referred to in text, are classified to sections 402, 423 and 426 of Title 42, respectively.

Parts A and C of Title XVIII of the Social Security Act, referred to in text, are classified to sections 1395c et seq., and 1395x et seq., respectively, of Title 42.

Sections 1862, 1863, 1864, 1867, 1868, 1869, 1874 and 1875 of the Social Security Act, referred to in text, are classified to sections 1395y, 1395z, 1395aa, 1395dd, 1395ee, 1395ff, 1395kk, and 1395*ll* of Title 42.

The Federal Insurance Contributions Act, referred to in text, is classified to section 3101 et seq. of Title 26, Internal Revenue Code.

Section 505 of the Classification Act of 1949, referred to in text, was classified to section 1105 of former Title 5 prior to the general revision of Title 5 by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378. See section 5108(c)(9) of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 7 of act Aug. 29, 1935, set out as section 228g of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, with certain enumerated exceptions, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

Section 602(e) of Pub. L. 93–445 provided that: "The provisions of section 7(e) of the Railroad Retirement Act of 1974 [subsec. (e) of this section] shall be effective on the enactment date of this Act [Oct. 16, 1974] and shall apply with respect to all gifts and bequests covered thereunder, regardless of the date on which such gifts or bequests were made."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 231e, 231*l*, 231n, 352, 362 of this title; title 42 sections 426, 1395u.

§ 231g. Court jurisdiction.

Decisions of the Board determining the rights or liabilities of any person under this subchapter shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act except that the time within which proceedings for the review of a decision with respect to an annuity, supplemental annuity, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant. (Aug. 29, 1935, ch. 812, § 8, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1343.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in text, is classified to section 351 et seq. of this title.

PRIOR PROVISIONS

A prior section 8 of act Aug. 29, 1935, set out as section 228h of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 231f of this title.

§ 231h. Returns of compensation; conclusiveness.

Employers shall file with the Board, in such manner and form and at such times as the Board by rules and regulations may prescribe, returns of compensation of employees, and, if the Board shall so require, shall furnish employees with statements of their compensation as reported to the Board. The Board's record of the compensation so returned shall be conclusive as to the amount of compensation paid to an employee during each period covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to have been paid to an employee during a particular period shall be taken as conclusive that no compensation was paid to such employee during that period, unless the error in the amount of compensation returned in the one case, or the failure to make return of the compensation in the other case, is called to the attention of the Board within four years after the day on which return of the compensation was required to be made. (Aug. 29, 1935, ch. 812, § 9, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1343.)

PRIOR PROVISIONS

A prior section 9 of act Aug. 29, 1935, set out as section 228i of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 231, 231b, 231f of this title.

§ 231i. Erroneous payments; adjustment; recovery; liability of officers.

(a) If the Board finds that at any time more than the correct amount of annuities or other benefits has been paid to any individual under this subchapter, or payment has been made to an individual not entitled thereto, recovery by adjustment in subsequent payments to which such individual, or any other individual on the basis of the same compensation, wages, or self-employment income, is entitled under this subchapter, or the Railroad Unemployment Insurance Act may, except as otherwise provided in this section, be made under regulations prescribed by the Board. If the individual to whom more than the correct amount has been paid dies before recovery is completed, recovery may be made by setoff or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this subchapter, or the Railroad Unemployment Insurance Act, to the estate of such individual or to any person on the basis of the compensation, wages, or self-employment income of such individual.

(b) Adjustments under this section may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of annuities or other benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case, recovery shall be deemed to have been completed upon such recertification.

(c) There shall be no recovery in any case in which more than the correct amount of annuities or other benefits has been paid under this subchapter to an individual or payment has been made to an individual not entitled thereto who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of this subchapter or the Railroad Unemployment Insurance Act or would be against equity or good conscience.

(d) No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under subsection (c) of this section or has been begun but cannot be completed under subsection (a) of this section. (Aug. 29, 1935, ch. 812, § 10, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1344.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in text, is classified to section 351 et seq. of this title.

PRIOR PROVISIONS

A prior section 10 of act Aug. 29, 1935, set out as section 228j of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 231f of this title.

§ 231j. Waiver of annuities.

Any person awarded an annuity under this subchapter may decline to accept all or any part of such annuity by a waiver signed and filed with the Board. Such a waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect. Such a waiver will have no effect on entitlement to, or the amount of, any other annuity or benefit. (Aug. 29, 1935, ch. 812, § 11, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1344.)

PRIOR PROVISIONS

A prior section 11 of act Aug. 29, 1935, set out as section 228k of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

§ 231k. Incompetence.

(a) Every individual receiving or claiming benefits, or to whom any right or privilege is extended, under this subchapter or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall be conclusively presumed to have been competent until the date on which the Board receives written notice, in a form and manner acceptable to the Board, that he is an incompetent, or a minor, for whom a guardian or other person legally vested with the care of his person or estate has been appointed: *Provided, however,* That, regardless of the legal competency or incompetency of an individual entitled to a benefit administered by the Board, the Board may, if it finds the interest of such individual to be served thereby, recognize actions by, and conduct transactions with, and make payments to, such individual, or recognize actions by, and conduct transactions with, and make payments to, a relative or some other person for such individual's use and benefit.

(b) Every guardian or other person legally vested with the care of the person or estate of an incompetent or minor who is receiving or claiming benefits, or to whom any right or privilege is extended, under this subchapter or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall have power everywhere, in the manner and to the extent prescribed by the Board, but subject to the provisions of the preceding subsection, to take any action necessary or appropriate to perfect any right or exercise any privilege of the incompetent or minor and to conduct all transactions on his behalf under this subchapter or any other Act of Congress now or hereafter administered, in whole or in part, by the Board. Any payment made pursuant to the provisions of this section shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment. (Aug. 29, 1935, ch. 812, § 12, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1345.)

PRIOR PROVISIONS

A prior section 12 of act Aug. 29, 1935, set out as section 228*l* of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

§ 231*l*. Penalties.

(a) Any person who shall knowingly fail or refuse to make any report or furnish any information required by the Board in the administration of this subchapter, including the provisions of section 231f(b)(2) of this title or who shall knowingly make or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purpose of this subchapter, or who shall knowingly make or aid in making any false or fraudulent statement or claim for the purpose of causing an award or payment to be made, shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

(b) All fines and penalties imposed by a court pursuant to this subchapter shall be paid to the court and be remitted from time to time by order of the judge to the Treasury of the United States to be credited to the Railroad Retirement Account. (Aug. 29, 1935, ch. 812, § 13, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1345.)

PRIOR PROVISIONS

A prior section 13 of act Aug. 29, 1935, set out as section 228m of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

§ 231m. Assignability; exemption from levy.

Notwithstanding any other law of the United States, or of any State, territory, or the District of Columbia, no annuity or supplemental annuity shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated: *Provided, however,* That the provisions of this section shall not operate to exclude the amount of any supplemental annuity paid to an individual under section 231a(b) of this title from income taxable pursuant to the Federal income tax provisions of Title 26. (Aug. 29, 1935, ch. 812, § 14, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1345.)

PRIOR PROVISIONS

A prior section 14 of act Aug. 29, 1935, set out as section 228n of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

§ 231n. Railroad Retirement Account.

(a) The Railroad Retirement Account established by section 15(a) of the Railroad Retirement Act of 1937 shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, to provide for the payment of benefits to be made from such Account in accordance with the provisions of section 231f(c)(1) of this title, and to provide for expenses necessary for the Board in the administration of all provisions of this subchapter, an amount equal to amounts covered into the Treasury (minus refunds) during each fiscal year under the Railroad Retirement Tax Act, except those portions of the amounts covered into the Treasury under section 3211(b), 3221(c), and 3221(d) of such Tax Act as are necessary to provide sufficient funds to meet the obligation to pay supplemental annuities at the level provided under section 231b(e) of this title and, with respect to those entitled to supplemental annuities under section 205(a) of Public Law 93–445, at the level provided under section 205(a) of Public Law 93–445. The Board is directed to determine what portion of the taxes collected under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act is to be credited to the Railroad Retirement Account pursuant to the preceding provisions this subsection and what portion of such

taxes is to be credited to the Railroad Retirement Supplemental Account pursuant to the provisions of subsection (c) of this section. The Board shall make such a determination with respect to each calendar quarter commencing with the quarter beginning January 1, 1975, shall make each such determination not later than fifteen days before each calendar quarter, and shall, as soon as practicable after each such determination, advise the Secretary of the Treasury of the determination made. The Secretary of the Treasury shall credit the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act to the Railroad Retirement Account and the Railroad Retirement Supplemental Account in such proportions as is determined by the Board pursuant to the provisions of this subsection.

(b) In addition to the amount appropriated in subsection (a) of this section, there is hereby authorized to be appropriated to the Railroad Retirement Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, such amount as the Board determines to be necessary to meet (A) the additional costs, resulting from the crediting of military service under this subchapter, of benefits payable under section 231a of this title, but only to the extent that such Account is not reimbursed for such costs under section 231f(c)(2) of this title, (B) the additional administrative expenses resulting from the crediting of military service under this subchapter, and (C) any loss in interest to such Account resulting from the payment of additional benefits based on military service credited under this subchapter: *Provided, however,* That, in determining the amount to be appropriated to the Railroad Retirement Account for any fiscal year pursuant to the provisions of this subsection, there shall not be considered any costs resulting from the crediting of military service under this subchapter for which appropriations to such Account have already been made pursuant to section 4(*l*) of the Railroad Retirement Act of 1937. Any determination as to loss in interest to the Railroad Retirement Account pursuant to clause (C) of the first sentence of this subsection shall take into account interest from the date each annuity based, in part, on military service began to accrue or was increased to the date or dates on which the amount appropriated is credited to the Account. The cost resulting from the payment of additional benefits under this subchapter based on military service determined pursuant to the preceding provisions of this subsection shall be adjusted by applying thereto the ratio of the total net level cost of all benefits under this subchapter to the portion of such net level cost remaining after the exclusion of administrative expenses and interest charges on the unfunded accrued liability as determined under the last completed actuarial valuation pursuant to the provisions of subsection (g) of this section. At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board shall, as promptly as practicable, determine the amount to be appropriated to the Account pursuant to the provisions of this subsection, and shall certify such amount to the Secretary of the Treasury for transfer from the general fund in the Treasury to the Railroad Retirement Account. When authorized by an appropriation Act, the Secretary of the Treasury shall transfer to the Railroad Retirement Account from the general fund in the Treasury such amounts as, from time to time, may be determined by the Board pursuant to the provisions of this subsection and certified by the Board for transfer to such Account. In any determination made pursuant to section 231f(c)(2) of this title, no further charges shall be made against the Trust Funds established by title II of the Social Security Act for military service rendered before January 1, 1957, and with respect to which appropriations authorized by clause (2) of the first sentence of section 4(*l*) of the Railroad Retirement Act of 1937 shall have been credited to the Railroad Retirement Account, but the additional benefit payments incurred by such Trust Funds by reason of such military service shall be taken in account in making any such determination.

(c) The Railroad Retirement Supplemental Account established by section 15(b) of the Railroad Retirement Act of 1937 shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such account for each fiscal year, beginning with the fiscal year ending June 30, 1975, out of any moneys in the Treasury not otherwise appropriated, to provide for the payment of supplemental annuities under section 231a (b) of this title, and to provide for the expenses necessary for the Board in the administration of the payment of such supplemental annuities, an amount equal to such portions of the amounts covered into the Treasury (minus refunds) during each fiscal year under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act as are not appropriated to the Railroad Retirement Account pursuant to the provisions of subsection (a) of this section.

(d) There is hereby authorized to be appropriated to the Railroad Retirement Account for each fiscal year, beginning with the fiscal year ending June 30, 1976, such sums as the Board determines to be necessary on a level basis to pay before the end of fiscal year 2000 the total of (A) the amounts of the annuities paid and to be paid after 1974 pursuant to the provisions of sections 231b(h), 231c(e), and 231 c(h) of this title and pursuant to the provisions of sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445, plus (B) any loss in interest to such Account resulting from the payment of such amounts reduced by (C) such amount as the Board determines, on an estimated basis, is equal to the excess of (i) the interest which such account will actually earn in the fiscal years 1976 through 2000 over (ii) the interest which such account would have earned in such fiscal years if the provisions of subsection (e) of this section were identical to the provisions of section 15(c) of the Railroad Retirement Act of 1937. The Board shall, at the time of each actuarial valuation made prior to the fiscal year 2000 pursuant to the provisions of subsection (g) of this section re-evaluate the amount determined under the preceding sentence for the purpose of determining the amounts to be appropriated thereunder.

(e) At the request and direction of the Board, it shall be the duty of the Secretary of the Treasury (hereinafter referred to as the "Secretary") to invest such portion of the amounts credited to the Railroad Retirement Account and the Railroad Retirement Supplemental Account as, in the judgment of the Board, is not immediately required for the payment of annuities, supplemental annuities, and death benefits. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (A) on original issue at the issue price; or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the accounts. Such obligations issued for purchase by the accounts shall have maturities fixed with due regard for the needs of the accounts, and shall bear interest at a rate equal to the average market yield, computed as of the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing notes of the United States then forming a part of the public debt that are not due or callable until after the expiration of three years from the end of such calendar month, except that where such rate is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such rate: *Provided*, That the rate of interest on such obligations shall in no case be less than 3 per centum per annum. At the request of the Board the Secretary shall purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, or other obligations which are lawful investments for trust funds of the United States, on original issue or at the market price: *Provided*, That the interest yield of such obligations shall not be less than the interest rate determined in accordance with the preceding sentence. At the request of the Board, the Secretary shall sell at the market price such obligations in the accounts (other than special obligations issued exclusively to the accounts) as the Board designates. The Board shall from time to time request the Secretary to redeem such special obligations issued exclusively to the accounts as the Board designates and upon such request the Secretary shall redeem such obligations at par plus accrued interest. All requests of the Board to the Secretary, provided for in this subsection, shall be mandatory upon the Secretary. It shall be the duty of the Board to determine at all times what proportion of the accounts shall be invested in other than special obligations issued to the accounts and further to determine which of such obligations available to the accounts consistent with the foregoing requirements will provide the greatest rate of return on the funds invested.

(f) The Board is hereby authorized and directed to select two actuaries, one from recommendations made by representatives of employees and the other from recommendations made by representatives of employers as defined in paragraph (i) of section 231(a)(1) of this title. These actuaries, along with a third who shall be designated by the Secretary of the Treasury, shall be known as the Actuarial Advisory Committee with respect to the Railroad Retirement Account. The actuaries so selected shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension plans: *Provided, however*, That these requirements shall not apply to any actuary who served as a member of the Committee prior to January 1, 1975. The Committee shall examine the actuarial reports and estimates made by the Board and shall have authority to recommend to the Board such changes in actuarial methods as they may deem necessary. The compensation of the members of the Committee, exclusive of the member designated by the Secretary, shall be fixed by the Board on a per diem basis.

(g) The Board shall include in its annual report a statement of the status and the operations of the Railroad Retirement and Railroad Retirement Supplemental Accounts. At intervals not longer than three years the Board shall make an estimate of the liabilities created by this subchapter and shall include such estimate in its annual report.

(h) There are hereby authorized to be appropriated from time to time such sums as may be necessary to provide for the expenses of the Board in administering the provisions of this subchapter. (Aug. 29, 1935, ch. 812, § 15, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1346, and amended Aug. 9, 1975, Pub. L. 94–92, title II, § 201(a)–(d), 89 Stat. 464, 465.)

REFERENCES IN TEXT

Sections 4 and 15 of the Railroad Retirement Act of 1937, referred to in text, are classified to sections 228c–1 and 228o of this title, respectively.

The Railroad Retirement Tax Act, referred to in text, is classified to section 3201 et seq. of Title 26, Internal Revenue Code.

Sections 3211 and 3221 of the Railroad Retirement Tax Act, are classified to section 3211 and 3221 of Title 26, respectively.

References to sections 204, 205, 206, and 207, and their various subsections, of Public Law 93–445, in subsecs. (a) and (d) of this sections were, in the original, references to such subsections and sections "of title II of this Act". Title II of Pub. L. 93–445, making all transitional provisions leading to coverage by the Railroad Retirement Act of 1974 [this subchapter], is set out in its entirety as a note under section 231 of this title, and sections 204, 205, 206, and 207 of Pub. L. 93–445, referred to above, are included in that note.

Title II of the Social Security Act, referred to in subsec. (b), is classified to section 401 et seq. of Title 42, The Public Health and Welfare.

The Second Liberty Bond Act, referred to in subsec. (e), is act Sept. 24, 1917, ch. 56, 40 Stat. 288, as amended, which was classified to section 745, former section 747, sections 752, 752a, 753, 754, 754a, 754b, 757, 757b, and 757c, former section 757c–1, sections 757c–2, 757c–3, 757c–4, 757d, 757e, 758, 760, and 764, former section 765, and sections 766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 15 of act Aug. 29, 1935, set out as section 228o of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

AMENDMENT

1975—Subsec. (a). Pub. L. 94–92, § 201(a), substituted in second sentence "is hereby appropriated" for "is hereby authorized to be appropriated".

Subsec. (b). Pub. L. 94–92, § 201(b), substituted in introductory text "amount appropriated" for "amount authorized to be appropriated".

Subsec. (c). Pub. L. 94–92, § 201(c), substituted in second sentence "is hereby appropriated" for "is hereby authorized to be appropriated" and inserted after "June 30, 1975," the words "out of any moneys in the Treasury not otherwise appropriated".

Subsec. (h). Pub. L. 94–92, § 201(d), added subsec. (h).

EFFECTIVE DATE OF 1975 AMENDMENT

Section 201(e) of Pub. L. 94–92 provided that: "The amendments [of this section] made by this section shall be effective January 1, 1975."

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly annuity or pension payment under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of Title 42, The Public Health and Welfare.

§ 231o. Private pensions.

Nothing in this subchapter shall be taken as restricting or discouraging payment by employers to retired employees of pensions or gratuities in addition to the annuities paid to such employees under this subchapter, nor shall this subchapter be taken as terminating any trust heretofore created for the payment of such pensions or gratuities. The annuity, except a supplemental annuity under section 231a(b) of this title, of an individual shall not be reduced on account of any pension or gratuity paid by an employer to such individual. (Aug. 29, 1935, ch. 812, § 16, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1349.)

PRIOR PROVISIONS

A prior section 16 of act Aug. 29, 1935, set out as section 228p of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly annuity or pension payment under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of Title 42, The Public Health and Welfare.

§ 231p. Free transportation.

It shall not be unlawful for carriers by railroad subject to this subchapter to furnish free transportation to individuals receiving annuities under this subchapter in the same manner as such transportation is furnished to employees in their service. (Aug. 29, 1935, ch. 812, § 17, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1349.)

PRIOR PROVISIONS

A prior section 17 of act Aug. 29, 1935, set out as section 228q of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

§ 231q. Crediting service under Social Security Act.

(1) Except as provided in subdivision (2), the term "employment" as defined in section 216 of the Social Security Act shall not include service performed by an individual as an employee as defined in section 231(b) of this title.

(2) For the purpose of determining (i) monthly insurance benefits under the Social Security Act to an employee who will have completed less than ten years of service and to others deriving from him or her during his or her life and (ii) monthly insurance benefits and lump-sum death benefits under such Act with respect to the death of an employee who (A) will have completed less than ten years of service or (B) will have completed ten or more years of service but will not have had a current connection with the railroad industry at the time of his death, and for the purposes of section 203 of that Act, section 210(a)(9) of the Social Security Act and subdivision (1) of this section shall not operate to exclude from "employment" under the Social Security Act service which would otherwise be included in such "employment" but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in service as an employee. In the application of the Social Security Act pursuant to this subdivision to service as an employee, all service as defined in section 231(d) of this title shall be deemed to have been performed within the United States. (Aug. 29, 1935, ch. 812, § 18, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1349.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is classified to section 301 et seq. of Title 42, The Public Health and Welfare.

Sections 203, 210(a)(9) and 216 of the Social Security Act, referred to in text, are classified to sections 403, 410(a)(9) and 416, respectively, of Title 42.

PRIOR PROVISIONS

A prior section 18 of act Aug. 29, 1935, set out as section 228r of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly annuity or pension payment under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 231f of this title.

§ 231r. Automatic benefit eligibility requirement adjustments.

(a) If title II of the Social Security Act is amended at any time after December 31, 1974, to reduce the benefits payable to a wife, husband's insurance benefits, disability insurance benefits, wife's insurance benefits payable to a wife, husband's insurance benefits, child's insurance benefits payable to a child of a deceased individual, widow's insurance benefits payable to a widow, widower's insurance benefits, mother's insurance benefits payable to a widow, or parent's insurance benefits, such reduced eligibility requirements shall be applicable, in accordance with regulations prescribed by the Board, to individuals, spouses, or survivors, as the case may be, under section 231a of this title to the extent that such reduced eligibility requirements would provide such individuals, spouses, or survivors with entitlement to annuities under such section 231a of this title to which they would not be entitled except for such reduced eligibility requirements: *Provided, however,* That no annuity shall be paid to any person pursuant to the provisions of this subsection if that person does not satisfy an eligibility requirement imposed by section 231a of this title of a kind not imposed by the Social Security Act on December 31, 1974, or an eligibility requirement imposed by section 231a of this title of a kind which was imposed by the Social Security Act on December 31, 1974, but which was not reduced by the amendment to that Act: *Provided further,* That the annuity amounts to which such individuals, spouses, or survivors will be entitled under this subchapter by reason of the provisions of this subsection shall be only such amounts as are determined under the provisions of section 231b(a), 231c(a), or 231c(f), respectively, of this title.

(b) If title II of the Social Security Act is amended at any time after December 31, 1974, to provide monthly insurance benefits under that Act to a class of beneficiaries not entitled to such benefits thereunder prior to January 1, 1975, every person who is a member of such class of beneficiaries shall be entitled to annuities under section 231a of this title, in accordance with regulations prescribed by the Board, in an amount equal to the amount of the monthly insurance benefit to which such person would have been entitled under the Social Security Act if service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(c) If section 226 or title XVIII of the Social Security Act is amended at any time after December 31, 1974, to reduce the conditions of entitlement to, or to expand the nature of, the benefits payable thereunder, or if health care benefits in addition to, or in lieu of, the benefits payable under such section 226 or such title XVIII are provided by any provision of law which becomes effective at any time after December 31, 1974, such reductions in the conditions of entitlement to benefits, such expanded benefits, or such additional, or substituted, health care benefits shall be available to every employee (as defined in this subchapter), and those deriving from him, in the same manner, and to the same extent, as if his service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act. The Board shall have the same authority, in accordance with regulations prescribed by it, to determine the rights of employees who will have completed ten years of service, and of those deriving from such employees, to benefits provided by reason of the provisions of this subsection as the Secretary of Health, Education, and Welfare has with respect to individuals insured under the Social Security Act.

(d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section—

(1) No annuity or other benefit shall be payable to any person on the basis of the compensation and years of service of an individual by reason of the provisions of subsection (a), (b), or (c) of this section if, and to the extent that, such annuity or other benefit would duplicate a benefit payable to such person on the basis of such compensation and years of service under a provision of the Social Security Act, or any other Act of Congress, which becomes effective after December 31, 1974.

(2) No annuity shall be payable to a person by reason of subsection (a) or (b) of this section unless the individual upon whose compensation and years of service such annuity would be based will have (A) completed ten years of service, and (B) in the case of a survivor, had a current connection with the railroad industry at the time of his death.

(3) If the Social Security Act is amended after December 31, 1974, to remove any, or all, restriction on the receipt of more than one monthly insurance benefit thereunder, annuity amounts provided a person under section 231b(h), 231c(e), or 231c(h) of this title, or under section 204(a)(3), 204(a)(4), 206(3), or 207(3) of Public Law 93–445, shall be reduced (but not below zero) by the amount of any annuity provided such person under this subchapter by reason of such amendment.

(4) If and to the extent that an annuity or other benefit payable to a person by reason of the provisions of subsection (a), (b), or (c) of this section duplicates an annuity or other benefit then payable to such person under other provisions of this subchapter, such annuity or other benefit then payable under other provisions of this subchapter shall be reduced (but not below zero) by the amount of the annuity or other benefit payable by reason of subsection (a), (b), or (c) of this section.

(Aug. 29, 1935, ch. 812, § 19, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1350.)

REFERENCES IN TEXT

Title II of the Social Security Act, referred to in text, is classified to section 401 et seq. of Title 42.

The Social Security Act, referred to in text, is classified to section 301 et seq. of Title 42, The Public Health and Welfare.

Section 226 of the Social Security Act, referred to in text, is classified to section 426 of Title 42.

Title XVIII of the Social Security Act, referred to in text, is classified to section 1395 et seq. of Title 42.

Reference to section 204(a)(3), 204(a)(4), 206(3), or 207(3) of Public Law 93–445 was, in the original, a reference to such subsections and sections of "title II of this Act". Title II of Pub. L. 93–455, making all transitional provisions leading to coverage by the Railroad Retirement Act of 1974 [this subchapter], is set out in

its entirety as a note under section 231 of this title, and sections 204, 206, and 207 of Pub. L. 93–445, referred to above, are included in that note.

PRIOR PROVISIONS

A prior section 19 of act Aug. 29, 1935, set out as section 228s of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly annuity or pension payment under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of Title 42, The Public Health and Welfare.

§ 231s. Separability of provisions.

If any provision of this subchapter, or the application thereof to any person or circumstance, should be held invalid, the remainder of such subchapter, or the application of such provision to other persons or circumstances, shall not be affected thereby. (Aug. 29, 1935, ch. 812, § 20, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1351.)

PRIOR PROVISIONS

A prior section 20 of act Aug. 29, 1935, set out as section 228s–1 of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

§ 231t. Short title.

This subchapter may be cited as the "Railroad Retirement Act of 1974". (Aug. 29, 1935, ch. 812, § 21, as added Oct. 16, 1974, Pub. L. 93–445, title I, § 101, 88 Stat. 1351.)

PRIOR PROVISIONS

A prior section 21 of act Aug. 29, 1935, set out as section 228s–2 of this title, was superseded in the general amendment and revision of act Aug. 29, 1935, by Pub. L. 93–445.

EFFECTIVE DATE

Section effective on Jan. 1, 1975, see section 602(a) of Pub. L. 93–445, set out as a note under section 231a of this title.

Chapter 11.—RAILROAD UNEMPLOYMENT INSURANCE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 228k, 231f, 231g, 2311, 772 of this title; title 19 section 2319.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 46–307 of the District of Columbia Code.

§ 351. Definitions.

For the purposes of this chapter, except when used in amending the provisions of other Acts—

* * * * *

(h) The term "registration period" means, with respect to any employee, the period which begins with the first day for which such employee registers at an employment office in accordance with such regulations as the Board may prescribe, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office; and thereafter each period which begins with the first day for which he next registers at an employment office after the end of his last preceding registration period which began with a day for which he registered at an employment office and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office.

The term "registration period" means also, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness is filed in his behalf in accordance with such regulations as the Board may prescribe, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness for a "period of continuing sickness" (as defined in section 352(a) of this title) was filed in his behalf, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day with respect to which a statement of sickness for a new "period of continuing sickness" (as defined in section 352(a) of this title) is filed in his behalf.

* * * * *

(k) Subject to the provisions of section 354 of this title (1) a day of unemployment, with respect to any employee, means a calendar day on which he is able to work and is available for work and with respect to which (i) no remuneration is payable or accrues to him, and (ii) he has, in accordance with such regulations as the Board may prescribe, registered at an employment office; and (2) a "day of sickness", with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work, or, with respect to a female employee, a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health, and with respect to which (i) no remuneration is payable or accrues to him, and (ii) in accordance with such regulations as the Board may prescribe, a statement of sickness is filed within such reasonable period, not in excess of ten days, as the Board may prescribe: *Provided, however,* That "subsidiary remuneration", as hereinafter defined in this subsection, shall not be considered remuneration for the purpose of this subsection except with respect to an employee whose base-year compensation, exclusive of earnings from the position or occupation in which he earned such subsidiary remuneration, is less than $1,000: *Provided further,* That remuneration for a working day which includes a part of each of two consecutive calendar days shall be deemed to have been earned on the first of such two days, and any individual who takes work for such working day shall not by reason thereof be deemed not available for work on the second of such calendar days: *Provided further,* That any calendar day on which no remuneration is payable to or

accrues to an employee solely because of the application to him of mileage or work restrictions agreed upon in schedule agreements between employers and employees or solely because he is standing by for or laying over between regularly assigned trips or tours of duty shall not be considered either a day of unemployment or a day of sickness.

For the purpose of this subsection, the term "subsidiary remuneration" means, with respect to any employee, remuneration not in excess of an average of ten dollars a day for the period with respect to which such remuneration is payable or accrues, if the work from which the remuneration is derived (i) requires substantially less than full time as determined by generally prevailing standards, and (ii) is susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

* * * * *

(As amended Aug. 9, 1975, Pub. L. 94–92, title I, § 1(a), (b), 89 Stat. 461.)

AMENDMENTS

1975—Subsec. (h). Pub. L. 94–92, § 1(a), inserted after "a statement of sickness" the phrase "for a period of continuing sickness (as defined in section 352(a) of this title)" wherever appearing and incorporated the phrase "and ends with the thirteenth day thereafter" in provision reading "and ends with whichever is the earlier of (i) the thirteenth day thereafter," and inserted cl. (ii) thereafter.

Subsec. (k). Pub. L. 94–92, § 1(b), substituted in second sentence "ten" for "three" dollars.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2 of Pub. L. 94–92 provided that:

"(a) The amendment made by section 1(a) of this Act [to subsec. (h) of this section] shall be effective with respect to days of sickness in registration periods beginning after June 30, 1975.

"(b) The amendment with respect to qualifying conditions made by section 1(f) [to section 353 of this title] shall be effective for services rendered after December 31, 1973.

"(c) The amendments made by sections 1(b), 1(c), and 1(d)(1) of this Act [to subsec. (k) of this section, first and second pars. of section 352(a) of this title, and exception provision in first proviso of section 352(c) of this title] shall be effective with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1975: *Provided, however,* That the amount of benefits paid for days of unemployment or days of sickness in a registration period beginning after June 30, 1975, and prior to the date of enactment of this Act [Aug. 9, 1975] shall, if paid to an employee who is covered by a nongovernmental plan for unemployment or sickness insurance and who has been paid benefits under such plan for one or more days within the registration period, be reduced by the amount, if any, by which the benefits paid to him under the nongovernmental plan would have been reduced if this Act [Pub. L. 94–92] had been enacted prior to July 1, 1975, so that the employee will receive, the full amount of the combined benefits that he would have received under the Railroad Unemployment Insurance Act [this chapter] and the nongovernmental plan if the benefit increases provided by this Act [Pub. L. 94–92] had been enacted prior to said date. The amount of each such reduction in the benefits paid under the amendment made by section 1(c)(2) of this Act [to second par. of section 352(a) of this title] shall be paid over by the Board to the insurer of the nongovernmental plan or to the employer if a self-insurer. Reductions in benefits and payments to insurers and employers hereunder shall be made on claims filed with the Board by such insurers and employers within thirty days after the date of enactment of this Act [Aug. 9, 1975].

"(d) The amendments made by sections 1(d)(2) and 1(e) of this Act [enacting proviso respecting employee with less than ten years of service in section 352(c) and enacting section 352(h) of this title] shall be effective with respect to days of unemployment in registration periods beginning after June 30, 1975.

"(e) The amendments made by sections 1(g), 1(h), 1(i)(1), and 1(j) of this Act [to sections 358(a) table, 358(b), 360(a)(1), and 361(a)(1) of this title] shall be effective with respect to compensation paid for services rendered after December 31, 1975.

"(f) The amendment made by section 1(i)(2) of this Act [to section 360(a)(ii) of this title] shall be effective on the date of enactment of this Act [Aug. 9, 1975]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 352 of this title; title 26 section 3306.

§ 352. Benefits.

(a) Days for which benefits payable; determination of amount.

Benefits shall be payable to any qualified employee for each day of unemployment in excess of four during any registration period: *Provided, however,* That notwithstanding the provisions of section 351(h) of this title, in any case in which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, other than a strike subject to the disqualification in section 354(a–2)(iii) of this title, none of the first seven days of unemployment due to such stoppage of work shall be included in any registration period; and subject to the registration provisions of section 351(h) of this title, so many of the ensuing seven consecutive calendar days during which his unemployment continues to be caused by such stoppage of work shall constitute a registration period, during which benefits shall be payable for each day of unemployment. Benefits shall be payable to any qualified employee for each day of sickness after the fourth consecutive day of sickness in a period of continuing sickness, but excluding four days of sickness in any registration period. A period of continuing sickness means (i) a period of consecutive days of sickness, whether from one or more causes, or (ii) a period of successive days of sickness due to a single cause without interruption of more than ninety consecutive days which are not days of sickness.

The daily benefit rate with respect to any such employee for such day of unemployment or sickness shall be in an amount equal to 60 per centum of the daily rate of compensation for the employee's last employment in which he engaged for an employer in the base year, but not less than $12.70: *Provided, however,* That for registration periods beginning after June 30, 1975, but before July 1, 1976, such amount shall not exceed $24 per day of such unemployment or sickness and that for registration periods beginning after June 30, 1976, such amount shall not exceed $25 per day of such unemployment or sickness. The daily rate of compensation referred to in this paragraph shall be determined by the Board on the basis of information furnished to the Board by the employee, his employer, or both.

In computing benefits to be paid, days of unemployment shall not be combined with days of sickness in the same registration period.

* * * * *

(c) Maximum number of benefit days.

The maximum number of days of unemployment within a benefit year for which benefits may be paid to an employee shall be one hundred and thirty, and the maximum number of days of sickness within a benefit year for which benefits may be paid to an employee shall be one hundred and thirty: *Provided, however,* That the total amount of benefits which may be paid to an employee for days of unemployment within a benefit year shall in no case exceed the employee's compensation in the base year; and the total amount of benefits which may be paid to an employee for days of sickness within a benefit year shall in no case exceed the employee's compensation in the base year except that notwithstanding the provisions of section 351(i) of this title, in determining the employee's compensation in the base year for purposes of this proviso and the second proviso of this subsection, any money remuneration paid to the employee for services rendered as an employee not in excess of $775 in any month shall be taken into account: *Provided further,* That, with respect to an employee who has less than ten years of service as defined in section 231(f) of this title, who did not voluntarily retire and did not voluntarily leave work without good cause, and who had current rights to normal benefits for days of unemployment in a benefit year but has exhausted such rights, the maximum number of days of, and amount of payment for, unemployment within such benefit year (as extended by the provisions of subsection (h) of this section) for which benefits may be paid shall be enlarged, but not by more than sixty-five days, to include all compensable days of unemployment within an extended benefit period determined pursuant to the provisions of subsection (h) of this section, but the total amount of benefits which may be paid to an employee for days of unemployment within such extended benefit period shall in no case exceed 50 per centum of the employee's compensation in the base year: *And provided further,* That, with respect to an employee who has ten or more years of service as defined in section 231(f) of this title, who did not voluntarily retire and (in a case involving exhaustion of rights to benefits for days of unemployment) did not voluntarily leave work without good cause, and who had current rights to normal benefits for days of unemployment or days of sickness in a benefit year but has exhausted such rights, the benefit year in which such rights are exhausted shall be deemed not to be ended until the last day of the extended benefit period determined under the following schedule, and the maximum number of days of, and amount of payment for, unemployment or sickness (depending on the type of benefit rights exhausted) within such benefit year for which benefits may be paid to the employee shall be enlarged to include all compensable days of unemployment or days of sickness, as the case may be within such extended benefit period:

If the employee's "years of service" total—	The extended benefit period shall begin on the first day of unemployment or sickness, as the case may be, following the day on which the employee exhausted his then current rights to normal benefits for days of unemployment or days of sickness and shall continue for successive fourteen-day periods (each of which period shall constitute a registration period) until the number of such fourteen-day periods totals—
10 and less than 15	7 (but not more than 65 days).
15 and over	13.

but no such extended benefit period shall extend beyond the beginning of the first registration period in a benefit year in which the employee is again qualified for benefits in accordance with section 353 of this title on the basis of compensation earned after the first of such successive fourteen-day periods has begun. For an employee who has ten or more years of service, who did not voluntarily retire and (in a case involving unemployment) did not voluntarily leave work without good cause, who has fourteen or more consecutive days of unemployment, or fourteen or more consecutive days of sickness, and who is not a "qualified employee" for the general benefit year current when such unemployment or sickness commences but is or becomes a "qualified employee" for the next succeeding general benefit year, such succeeding benefit year shall, in his case, begin on the first day of the month in which such unemployment or sickness commences. Notwithstanding the other provisions of this subsection, an extended benefit period for sickness benefits shall terminate on the day next preceding the date on which the employee attains age 65, except that it may continue for the purpose of the payment of unemployment benefits; and, in the case of a succeeding benefit year beginning in accordance with the next preceding sentence by reason of sickness, such sentence shall not operate to permit the payment of benefits in the period provided for in such sentence for any day of sickness beginning with the day on which age 65 is attained and continuing through the day preceding the first day of the next suceeding general benefit year. For purposes of this subsection, the Board may rely on evidence of age available in its records and files at the time determinations of age are made.

* * * * *

(g) Payment of accrued benefits upon death.

Benefits accrued to an individual but not yet paid at death shall, upon certification by the Board, be paid, without necessity of filing further claims therefor, to the same individual or individuals to whom any accrued annuities under section 231e(a)(1) of this title are paid. In the event that no such accrued annuities are paid, and if application for such accrued benefits is filed prior to the expiration of two years after the death of the individual to whom such benefits accrued, such accrued benefits shall be paid, upon certification by the Board, to the individual or individuals who would be entitled thereto under section 231e(a)(1) of this title if such accrued benefits were accrued annuities. If there is no individual to whom all or any part of such accrued benefits can be

paid in accordance with the foregoing provisions, such benefits or part thereof shall escheat to the credit of the account.

(h)(1) Extended benefit period.

For purposes of the second proviso of subsection (c) of this section, an extended benefit period, with respect to an employee, shall begin on the first day of unemployment within a period of high unemployment following the day on which the employee exhausted his then current rights to normal benefits for unemployment and shall continue for seven successive fourteen-day periods (each of which periods shall constitute a registration period). If the general benefit year in which an employee's extended benefit period began ends within such extended benefit period, such benefit year shall, in the case of such employee, be deemed not to be ended until the last day of the extended benefit period. If an employee unemployed within a period of high unemployment is not a "qualified employee" for the general benefit year then current but was a "qualified employee" for the preceding general benefit year, such preceding general benefit year shall, for purposes of the second proviso of subsection (c) of this section, in the case of such employee, be deemed not to be ended until the last day of such employee's extended benefit period determined pursuant to the provisions of this subsection.

(2) Period of high unemployment.

For purposes of subdivision (1) of this subsection, a "period of high unemployment" shall begin with the twentieth day after whichever of the following first occurs: (A) there is a national "on" indicator as defined in section 203(d) of Public Law 91–373, as amended, or (B) a period of three consecutive calendar months in which, for each month included in such period, the rate of railroad unemployment (seasonally adjusted) equalled or exceeded the lowest applicable unemployment rate specified for the national "on" indicator in section 203(d) of Public Law 91–373, as amended, and shall end with the twentieth day after both of the following occur: (A) there is a national "off" indicator as defined in section 203 (d) of Public Law 91–373, as amended, and (B) a period of three consecutive calendar months, in which, for each month included in such period, the rate of railroad unemployment (seasonally adjusted) was less than the lowest applicable unemployment rate specified for the national "off" indicator in section 203(d) of Public Law 91–373, as amended.

(3) Rate of railroad unemployment.

For purposes of subdivision (2) of this subsection, the term "rate of railroad unemployment" for a month means the percentage arrived at by dividing (A) the average weekly number of individuals who filed bona fide claims for benefits for days of unemployment in such month, excluding from such number those individuals whose unemployment was due to a stoppage of work because of a strike, lockout, or other labor dispute, by (B) the average midmonth count of employees of class I railroads and class I switching and terminal companies, as reported to the Interstate Commerce Commission, adjusted, as determined by the Board, to include all employees covered by this chapter for the twelve months ending with the second calendar quarter preceding such month.

(4) Determination of period of high unemployment; publication in Federal Register: notice of determination and formulas for mid-month and seasonal adjustments.

Determinations under this subsection shall be made by the Board in accordance with regulations prescribed by it. When a determination has been made that a "period of high unemployment" is beginning or ending, the Board shall cause notice of such determination to be published in the Federal Register. The Board shall also cause to be published in the Federal Register the formula which it uses to adjust the mid-month count of employees of class I railroads and class I switching and terminal companies to include all employees covered by this chapter, and the formula it uses to make seasonal adjustments in the rate of railroad unemployment. (As amended Oct. 16, 1974, Pub. L. 93–445, title IV, § 401, 88 Stat. 1359; Aug. 9, 1975, Pub. L. 94–92, title I, § 1(c)–(e), 89 Stat. 461, 462.)

REFERENCES IN TEXT

Section 203(d) of Public Law 91–373, as amended, referred to in subsec. (h)(2), is set out as a note under section 304 of Title 26, Internal Revenue Code.

AMENDMENTS

1975—Subsec. (a), first par. Pub. L. 94–92, § 1(c)(1), inserted the proviso and definition of registration period, provided for payment of sickness benefits after four rather than after seven days of sickness, and inserted definition of period of continuing sickness.

Subsec. (a), second par. Pub. L. 94–92, § 1(c)(2), substituted provisions for a daily rate of unemployment and sickness benefits, for registration periods beginning after June 30, 1975, but before July 1, 1976, equal to the smaller of $24 or 60 percent of the beneficiary's last daily rate of pay in the base period (but not less than $12.70), and for registration periods beginning after June 30, 1976, a daily rate of $25 for prior provision for such benefits set out in a table with ten levels of base year compensation and corresponding daily benefit rates starting at $8.00, payable to those with the minimum qualifying base year compensation, and rising to a maximum of $12.70, which is reached by those who received base year compensation totalling $4,000 or more and prescribing a minimum daily benefit not less than the smaller of the table maximum ($12.70) or 60 percent of the beneficiarys' last daily rate of pay in the base period.

Subsec. (c). Pub. L. 94–92, § 1(d), inserted exception provision in the first proviso and proviso respecting an employee with less than ten years of service.

Subsec. (h). Pub. L. 94–92, § 1(e), added subsec. (h).

1974—Subsec. (c). Pub. L. 93–445, § 401(a), substituted "ten or more years of service as defined in section 231(f) of this title" for "ten or more years of service as defined in section 228a(f) of this title" and struck out "and section 360(h) of this title" following "For purposes of this subsection".

Subsec. (g). Pub. L. 93–445, § 401(b), substituted "section 231e(a)(1) of this title" for "section 228c(f)(1) of this title" in two instances.

EFFECTIVE DATE OF 1975 AMENDMENT; REDUCTION OF BENEFITS IN VIEW OF COVERAGE UNDER NONGOVERNMENTAL PLAN; FILING CLAIMS FOR PAYMENTS TO INSURERS AND EMPLOYERS

Amendment of first and second pars. of subsec. (a) and enactment of subsec. (c) first proviso exception clause by sections 1(c) and 1(d)(1) of Pub. L. 94–92 effective with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1975, reduction of benefits in view of coverage under nongovernmental plan, and filing of claims for payments to insurers and employers; and enactment of subsec. (c) proviso respecting an employee with less than ten years of service

and subsec. (h) by sections 1(d)(2) and 1(e) of Pub. L. 94–92 effective with respect to days of unemployment in registration periods beginning after June 30, 1975, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 360, 362 of this title.

§ 353. Qualifying condition.

An employee shall be a "qualified employee" if the Board finds that his compensation will have been not less than $1,000 with respect to the base year, and, if such employee has had no compensation prior to such year, that he will have had compensation with respect to each of not less than five months in such year. (As amended Aug. 9, 1975, Pub. L. 94–92, title I, § 1(f), 89 Stat. 463.)

AMENDMENTS

1975—Pub. L. 94–92 substituted "five" for "seven" months.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–92 effective for services rendered after Dec. 31, 1973, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 352, 360, 362 of this title.

§ 354. Disqualifying conditions.

(a–1) Day of unemployment or day of sickness.

There shall not be considered as a day of unemployment, or as a day of sickness, with respect to any employee—

(i) any of the seventy-five days beginning with the first day of any registration period with respect to which the Board finds that he knowingly made or aided in making or caused to be made any false or fraudulent statement or claim for the purpose of causing benefits to be paid;

(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments under the Railroad Retirement Act of 1974, or insurance benefits under title II of the Social Security Act, or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law other than this chapter, or any other social-insurance payment under any law: *Provided*, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this chapter for such registration period will have been paid, the amount by which such benefits under this chapter will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: *Provided further*, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this chapter which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this chapter for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments.

* * * * *

(As amended Oct. 16, 1974, Pub. L. 93–445, title IV, § 402, 88 Stat. 1359.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a–1)(ii), is classified to section 231 et seq. of this title.

Title II of the Social Security Act, referred to in subsec. (a–1(ii)), is classified to sections 401 et seq. of Title 42, The Public Health and Welfare.

AMENDMENTS

1974—Subsec. (a–1)(ii). Pub. L. 93–445 substituted "annuity payments under the Railroad Retirement Act of 1974" for "annuity payments or pensions under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 352 of this title.

§ 358. Contributions.

(a) Employers' contributions.

Every employer shall pay a contribution, with respect to having employees in his service, equal to the percentage determined as set forth below of so much of the compensation as is not in excess of $300 for any calendar month paid by him to any employee for services rendered to him after June 30, 1939, and before July 1, 1954, and is not in excess of $350 for any calendar month paid by him to any employee for services rendered to him after June 30, 1954, and before June 1, 1959, and is not in excess of $400 for any calendar month paid by him to any employee for services rendered to him after May 31, 1959: *Provided, however*, That if compensation is paid to an employee by more than one employer with respect to any such calendar month, the contributions required by this subsection shall apply to not more than $300 for any month before July 1, 1954, and to not more than $350 for any month after June 30, 1954, and before June 1, 1959, and to not more than $400 for any month after May 31, 1959, of the aggregate compensation paid to said employee by all said employers with respect to such calendar month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services during any calendar month after 1946 bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during

such month is less than $300 if such month is before July 1, 1954, or less than $350 if such month is after June 30, 1954, and before June 1, 1959, or less than $400 if such month is after May 31, 1959, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional contribution as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month:

1. With respect to compensation paid prior to January 1, 1948, the rate shall be 3 per centum;

2. With respect to compensation paid after the month in which this chapter was amended in 1959, the rate shall be as follows:

If the balance to the credit of the railroad unemployment insurance account as of the close of business on September 30 of any year, as determined by the Board, is:	The rate with respect to compensation paid during the next succeeding calendar year shall be:
	Percent
$300,000,000 or more	0.5
$200,000,000 or more but less than $300,000,000	4.0
$100,000,000 or more but less than $200,000,000	5.5
$50,000,000 or more but less than $100,000,000	7.0
Less than $50,000,000	8.0

As soon as practicable following the enactment of this Act, the Board shall determine and proclaim the balance to the credit of the account as of the close of business on September 30, 1947, and on or before December 31 of 1948 and of each succeeding year, the Board shall determine and proclaim the balance to the credit of the account as of the close of business on September 30 of such year; and in determining such balance as of September 30 of any year, the balance to the credit of the railroad unemployment insurance administration fund as of the close of business on such date shall be deemed to be a part of the balance to the credit of such account.

(b) Employee representatives' contributions.

Each employee representative shall pay a contribution with respect to so much of the compensation paid to him for services performed as an employee representative during any month after December 1975 as is not, for any such calendar month, in excess of $400, at the rate applicable to employers in accordance with subsection (a) of this section. The compensation of an employee representative and the contribution with respect thereto shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in this chapter.

* * * * *

(As amended Aug. 9, 1975, Pub. L. 94–92, title I, § 1(g), (h), 89 Stat. 463.)

REFERENCES IN TEXT

The phrase "following the enactment of this Act", referred to in subsec. (a), has reference to act June 23, 1948.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–92, § 1(g), substituted table reading:

"$300,000,000 or more	0.5
$200,000,000 or more but less than $300,000,000	4.0
$100,000,000 or more but less than $200,000,000	5.5
$50,000,000 or more but less than $100,000,000	7.0
Less than $50,000,000	8.0"
for prior provisions reading:	
"$450,000,000 or more	1½
$400,000,000 or more but less than $450,000,000	2
$350,000,000 or more but less than $400,000,000	2½
$300,000,000 or more but less than $350,000,000	3
Less than $300,000,000	4"

Subsec. (b). Pub. L. 94–92, § 1(h), substituted "Each employee representative shall pay a contribution with respect to so much of the compensation paid to him for services performed as an employee representative during any month after December 1975 as is not, for any such calendar month, in excess of $400, at the rate applicable to employers in accordance with subsection (a) of this section." for "Each employee representative shall pay, with respect to his income, a contribution equal to 4 per centum of so much of the compensation of such employee representative as is not in excess of $300 for any calendar month, paid to him for services performed as an employee representative after June 30, 1939, and before July 1, 1954, and as is not in excess of $350 paid to him for services rendered as an employee representative in any calendar month after June 30, 1954, and before June 1, 1959, and as is not in excess of $400 paid to him for services rendered as an employee representative in any calendar month after May 31, 1959."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–92 effective with respect to compensation paid for services rendered after Dec. 31, 1975, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 352, 360, 404 of this title.

§ 360. Railroad unemployment insurance account.

(a) Funds constituting account; availability for benefits or refunds.

The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 1104 of Title 42 an account to be known as the railroad unemployment insurance account. This account shall consist of (i) such part of all contributions collected pursuant to section 358 of this title as is in excess of 0.5 per centum of the total compensation on which such contributions are based, together with all interest collected pursuant to section 358(g) of this title; (ii) all amounts transferred or paid into the account pursuant to section 363 or section 364 of this title; (iii) all additional amounts appropriated to the account in accordance with any provision of this chapter or with any provision of law now or hereafter adopted; (iv) a proportionate part of the earnings of the unemployment trust fund, computed in accordance with the provisions of section 1104(e) of Title 42; (v) all amounts realized in recoveries for overpayments or erroneous payments of benefits; (vi) all amounts transferred thereto pursuant to section 361 of this title; (vii) all fines or penalties collected pursuant to the provisions of this chapter; and (viii) all amounts credited thereto pursuant to section 352(f) or section 362(g) of this title. Notwithstanding any other provision of law, all moneys credited to the account shall be mingled and undivided, and are permanently appropriated to the Board to be continuously available to the Board without further appropriation, for the payment of benefits and

refunds under this chapter, and no part thereof shall lapse at any time, or be carried to the surplus fund or any other fund.

* * * * *

(e) Repealed. Pub. L. 93–445, title IV, § 403, Oct. 16, 1974, 88 Stat. 1359.

(As amended Oct. 16, 1974, Pub. L. 93–445, title IV, § 403, 88 Stat. 1359; Aug. 9, 1975, Pub. L. 94–92, title I, § 1(i), 89 Stat. 464.)

AMENDMENTS

1975—Subsec. (a)(1). Pub. L. 94–92, § 1(1)(1), substituted "0.5" for "0.25".

Subsec. (a)(ii). Pub. L. 94–92, § 1(1)(2), deleted "and pursuant to subsection (h)[e] of this section". Congress probably intended to delete the internal reference to subsec. (e) of this section in view of repeal of the subsection by section 403 of Pub. L. 93–445 and it being the last subsection of the section.

1974—Subsec. (e). Pub. L. 93–445 repealed subsec. (e) which provided for the annual adjustment of the account and the transfer of funds from the Railroad Retirement Account.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by sections 1(i)(1) and 1(i)(2) of Pub. L. 94–92 effective with respect to compensation paid for services rendered after Dec. 31, 1975; and effective Aug. 9, 1975, respectively, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 352 of this title.

§ 361. Railroad unemployment insurance administration fund.

(a) Maintenance of account; amounts constituting fund.

The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 1104 of Title 42 an account to be known as the railroad unemployment insurance administration fund. This unemployment insurance administration fund shall consist of (i) such part of all contributions collected pursuant to section 358 of this title as equals 0.5 per centum of the total compensation on which such contributions are based; (ii) all amounts advanced to the fund by the Secretary of the Treasury pursuant to this section; (iii) all amounts appropriated by subsection (b) of this section; and (iv) such additional amounts as Congress may appropriate for expenses necessary or incidental to administering this chapter. Such additional amounts are authorized to be appropriated.

* * * * *

(c) Availability for administrative expenses.

Notwithstanding any other provision of law, all moneys at any time credited to the fund are permanently appropriated to the Board to be continuously available to the Board without further appropriation for any expenses necessary or incidental to administering this chapter, including personal services in the District of Columbia and elsewhere; travel expenses, including expenses of attendance at meetings when authorized by the Board; actual transportation expenses and not to exceed $10 per diem to cover subsistence and other expenses while in attendance at and en route to and from the place to which he is invited, to any person other than an employee of the Federal Government who may, from time to time, be invited to the city of Washington or elsewhere for conference or advisory purposes in furthering the work of the Board; when found by the Board to be in the interest of the Government, not exceeding 3 per centum, in any fiscal year, of the amounts credited during such year to the fund, for engaging persons or organizations, by contract or otherwise, for any special technical or professional services, determined necessary by the Board, including but not restricted to accounting, actuarial, statistical, and reporting services, without regard to section 5 of Title 41 and the provisions of other laws applicable to the employment and compensation of officers and employees of the United States; services; advertising, postage, telephone, telegraph, teletype, and other communication services and tolls; supplies; reproducing, photographing, and all other equipment, office appliances, and laborsaving devices, including devices for internal communication and conveyance; purchase and exchange, operation, maintenance and repair of motor-propelled passenger-carrying vehicles to be used only for official purposes in the District of Columbia and in the field; printing and binding; purchase and exchange of law books, books of reference, and directories; periodicals, newspapers and press clippings, in such amounts as the Board deems necessary, without regard to the provisions of section 102 of Title 5; manuscripts and special reports; membership fees or dues in organizations which issue publications to members only, or to members at a lower price than to others, payment for which may be made in advance; rentals, including garages, in the District of Columbia or elsewhere; alterations and repairs; if found by the Board to be necessary to expedite the certification to the Board by the Civil Service Commission of persons eligible to be employed by the Board, and to the extent that the Board finds such expedtion necessary, meeting the expenses of the Civil Service Commission in holding examinations for testing the fitness of applicants for admission to the classified service for employment by the Board pursuant to the second paragraph of section 362(*l*) of this title, but not to exceed the additional expenses found by the Board to have been incurred by reason of the holding of such examinations; and miscellaneous items, including those for public instruction and information deemed necessary by the Board: *Provided*, That section 5 of Title 41 shall not be construed to apply to any purchase or procurement of supplies or services by the Board from moneys in the fund when the aggregate amount involved does not exceed $300. Determinations of the Board whether the fund or an appropriation for the administration of the Railroad Retirement Act of 1974 is properly chargeable with the authorized expenses, or parts thereof, incurred in the administration of such Act, or of this chapter, shall be binding and conclusive for all purposes and upon all persons, including the Comptroller General

and any other administrative or accounting officer, employee, or agent of the United States and shall not be subject to review in any manner.

* * * * *

(As amended Oct. 16, 1974, Pub. L. 93–445, title IV, § 404, 88 Stat. 1359; Aug. 9, 1975, Pub. L. 94–92, title I, § 1(j), 89 Stat. 464.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (c), is classified to section 231 et seq. of this title.

AMENDMENTS

1975—Subsec. (a)(1). Pub. L. 94–92 substituted "0.5" for "0.25".

1974—Subsec. (c). Pub. L. 93–445 substituted "Railroad Retirement Act of 1974" and "such Act" for "Railroad Retirement Act of 1937 and the Railroad Retirement Act of 1935" and "such Acts", respectively.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–92 effective with respect to compensation paid for services rendered after Dec. 31, 1975, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 360, 362 of this title.

§ 362. Duties and powers of Board.

* * * * *

(*l*) Necessary and incidental powers; employees of Board, employment, remuneration, civil-service laws, registration of unemployed, and detail.

In addition to the powers and duties expressly provided, the Board shall have and exercise all the powers and duties necessary to administer or incidental to administering this chapter, and in connection therewith shall have such of the powers, duties, and remedies provided in subdivisions (5), (6), and (9) of section 231f(b) of this title, with respect to the administration of the Railroad Retirement Act of 1974, as are not inconsistent with the express provisions of this chapter. A person in the employ of the Board under section 205 of the Act of Congress approved June 24, 1937 (50 Stat. 307), shall acquire a competitive classified civil-service status if, after recommendation by the Board to the Civil Service Commission, he shall pass such noncompetitive tests of fitness as the Civil Service Commission may prescribe. A person in the employ of the Board on June 30, 1939, and on June 30, 1940, and who has had experience in railroad service, shall acquire a competitive classified civil-service status if, after recommendation by the Board to the Civil Service Commission, he shall pass such noncompetitive tests of fitness for the position for which the Board recommends him as the Civil Service Commission may prescribe.

The Board may employ such persons and provide for their remuneration and expenses, as may be necessary for the proper administration of this chapter. Such persons shall be employed and their remuneration prescribed in accordance with the civil-service laws and chapter 51 and subchapter III of chapter 53 of Title 5: *Provided*, That all positions to which such persons are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed or excepted therefrom: *Provided*, That in the employment of such persons the Board shall give preference, as between applicants attaining the same grades, to persons who have had experience in railroad service, and notwithstanding any other provisions of law, rules, or regulations, no other preference shall be given or recognized: *And provided further*, That certification by the Civil Service Commission of persons for appointment to any positions at minimum salaries of $4,600 per annum, or less, shall, if the Board so requests, be upon the basis of competitive examinations, written, oral, or both, as the Board may request: *And provided further*, That, for the purpose of registering unemployed employees who reside in areas in which no employer facilities are located, or in which no employer will make facilities available for the registration of such employees, the Board may, without regard to civil-service laws and chapter 51 and subchapter III of chapter 53 of Title 5, appoint persons to accept, in such areas, registration of such employees and perform services incidental thereto and may compensate such persons on a piece-rate basis to be determined by the Board. Notwithstanding any other provision of law, the Board may detail employees from stations outside the District of Columbia to other stations outside the District of Columbia or to service in the District of Columbia, and may detail employees in the District of Columbia to service outside the District of Columbia: *Provided*, That all details hereunder shall be made by specific order and in no case for a period of time exceeding one hundred and twenty days. Details so made may, on expiration, be renewed from time to time by order of the Board, in each particular case, for periods not exceeding one hundred and twenty days.

* * * * *

(As amended Oct. 16, 1974, Pub. L. 93–445, title IV, § 405, 88 Stat. 1359.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (*l*), is classified to section 231 et seq. of this title.

Section 205 of act June 24, 1937 (50 Stat. 307), referred to in subsec. (*l*), is not classified to the code.

The civil-service laws, referred to in subsec. (*l*), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

CODIFICATION

In susec. (*l*), "chapter 51 and subchapter III of chapter 53 of Title 5" was substituted for "the Classification Act of 1949" on authority of sec. 7(b) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In the last sentence of subsec. (*l*), following the first word "Notwithstanding", reference to the provisions of the Act of June 22, 1906 (34 Stat. 449), has been omitted as obsolete. The provisions were enacted as section 3342 of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 425. Section 3342 of Title 5 was repealed by Pub. L. 89–762, § 1(a), Nov. 5, 1966, 80 Stat. 1312.

AMENDMENTS

1974—Subsec. (*l*). Pub. L. 93–445 substituted "subdivisions (5), (6), and (9) of section 231f(b) of this title" for "section 228j(b)(4) of this title".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of Title 42, The Public Health and Welfare.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organizations and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 231f, 351, 360, 361, 363 of this title.

Chapter 13.—RAILROAD SAFETY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 49 section 1.

§ 435. Investigative and surveillance activities by State.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 440, 441 of this title.

§ 437. General powers.

(a) Authority of Secretary.

In carrying out his functions under this subchapter, the Secretary is authorized to perform such acts including, but not limited to, conducting investigations, making reports, issuing subpenas, requiring production of documents, taking depositions, prescribing recordkeeping and reporting requirements, carrying out and contracting for research, development, testing, evaluations, and training (particularly with respect to those aspects of railroad safety which he finds to be in need of prompt attention), and delegating to any public bodies or qualified persons, functions respecting examination, inspecting, and testing of railroad facilities, equipment, rolling stock, operations, or persons, as he deems necessary to carry out the provisions of this subchapter. The Secretary is further authorized to issue orders directing compliance with this chapter or with any railroad safety rule, regulation, order, or standard issued under this chapter; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.

* * * * *

(As amended Pub. L. 93–633, title II, § 206, Jan. 3, 1975, 88 Stat. 2166.)

REFERENCES IN TEXT

"This chapter", referred to in subsec. (a), was in the original "this Act", which enacted this chapter and chapter 26 (§ 1761 et seq.) of Title 49, Transportation. Chapter 26 of Title 49 was repealed by section 113(g) of Pub. L. 93–633, Jan. 3, 1975, 88 Stat. 2163.

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–633 authorized issuance of compliance orders and empowered federal district courts to enforce such orders.

§ 438. Civil penalties.

(a) Unlawful acts.

It shall be unlawful for any railroad to disobey, discharge, or fail to adhere to any rule, regulation, order, or standard prescribed by the Secretary under this subchapter.

(b) Amount.

The Secretary shall include in, or make applicable to, any railroad safety rule, regulation, order, or standard issued under this subchapter a civil penalty for violation thereof or for violation of section 39 of this title in such amount, not less than $250 nor more than $2,500, as he deems reasonable.

* * * * *

(As amended Pub. L. 93–633, title II, § 204(a), Jan. 3, 1975, 88 Stat. 2165.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 93–633 made provision for a civil penalty for violation of section 39 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 39 of this title.

§ 440. Annual report by Secretary; contents; recommendations for additional legislation; special report by Secretary.

* * * * *

(c) The Secretary shall prepare and submit to the President and the Congress, not later than March 17, 1976, a comprehensive railroad safety report. Such report shall—

(1) contain a description of the areas of railroad safety with respect to which Federal safety standards issued under this chapter are in effect (as of June 30, 1975);

(2) identify any area of railroad safety with respect to which Federal safety standards have been proposed but have not been issued under this chapter (as of June 30, 1975);

(3) identify any area of railroad safety with respect to which Federal safety standards have not been issued under this chapter (as of June 30, 1975);

(4) identify alternative and more cost-effective methods for inspection and enforcement of Federal safety standards, including mechanical and electronic inspection, and contain an evaluation of problems involved in implementing such alternatives, with specific attention to the need for cooperation with the railroad industry;

(5) identify the areas of railroad safety listed in accordance with paragraphs (1) through (3) of this subsection which involve, or which may involve, State participation under section 435 of this title;

(6) contain a description of the railroad safety program which is in effect or planned in each State (as of June 30, 1975), including—

(A) State program development;

(B) State plans to participate in program areas listed in accordance with paragraph (1) of this subsection, which are not covered by a State certification or agreement;

(C) State interest in participating in each program area listed in accordance with paragraphs (2) and (3) of this subsection, following issuance of the applicable safety standards;

(D) annual projections of each State agency's needs for personnel, equipment, and activities reasonably required to carry out its State program during each fiscal year from 1976 through 1980 together with estimates of the annual costs thereof separately stated as to projections under subparagraphs (B) and (C) of this paragraph;

(E) the sources from which the State expects to draw the funds to finance such programs; and

(F) the amount of State funds and of Federal financial assistanec[1] needed during each such fiscal year, by category;

(7) contain a detailed analysis of (A) the number of safety inspectors needed (by industry and Government respectively) to maintain an adequate and reasonable railroad safety program and record; (B) the minimum training and other qualifications needed for each such inspector; (C) the present and projected availability of such personnel in comparison to the need therefor; (D) the salary levels of such personnel in relation to salary levels for comparable positions in industry, State governments, and the Federal Government;

(8) evaluate alternative methods of allotting Federal funds among the States applying for Federal financial assistance, including recommendations, if needed, for a formula for such apportionment;

(9) contain a discussion of other problems affecting cooperation among the States that relate to effective participation of State agencies in the nationwide railroad safety program;

(10) contain a description of the regulations and handling criteria established by the Secretary under the Hazardous Materials Transportation Act specifically applicable to the transportation of radioactive materials by railroad (as of June 30, 1975), together with annual projections of the amounts of radioactive materials reasonably expected to be transported by railroad during each fiscal year from 1976 through 1980 and an evaluation of the need for additional regulations and handling criteria applicable to the transportation of radioactive materials by railroad during each such fiscal year; and

(11) contain recommendations for any additional Federal and State legislation needed to further realization of the objectives of this chapter.

Such report shall be prepared by the Secretary, directly or indirectly, after research, examination, study, and consultation with the national associations representing railroad employee unions, railroad management, cooperating State agencies, the national organization of State commissions, universities, and other persons having special expertise or experience with respect to railroad safety. Such report shall include, in an appendix, a statement of the views of the national associations representing railroad employee unions, of the carriers, and of the national organization of State commissions with respect to the content of such report in its final form. (As amended Pub. L. 93–633, title II, § 203, Jan. 3, 1975, 88 Stat. 2164; Pub. L. 94–56, § 2, July 19, 1975, 89 Stat. 263.)

[1] So in original. Should read "assistance".

REFERENCES IN TEXT

"This chapter", referred to in subsec. (c), was in the original "this Act", which enacted this chapter and chapter 26 (§ 1761 et seq.) of Title 49, Transportation. Chapter 26 of Title 49 was repealed by section 113(g) of Pub. L. 93–633, Jan. 3, 1975, 88 Stat. 2163.

The Hazardous Materials Transportation Act, referred to in subsec. (c)(10), is Title I of Pub. L. 93–633, §§ 101 to 115, Jan. 3, 1975, 88 Stat. 2156. For distribution of this Act in the Code, see Short Title note under section 1801 of Title 49, Transportation.

AMENDMENTS

1975—Subsec. (c)(10). Pub. L. 94–56 added subsec. (c)(10). Former subsec. (c)(10) redesignated (c)(11).

Subsec. (c)(11). Pub. L. 94–56 redesignated former subsec. (c)(10) as (c)(11).

Subsec. (c). Pub. L. 93–633 added subsec. (c).

SHORT TITLE OF 1975 AMENDMENT

Section 1 of Pub. L. 94–56 provided: "That this Act [amending this section, section 441 of this title and section 1812 of Title 49, Transportation] may be cited as the 'Federal Railroad Safety Authorization Act of 1975'."

SHORT TITLE

Section 201 of Pub. L. 93–633 provided that: "This title [which added subsec. (c) of this section, amended sections 39, 437(a), 438(b), and 441 of this title, and enacted provisions set out as a note under this section] may be cited as the 'Rail Safety Improvement Act of 1974'."

CONGRESSIONAL DECLARATION OF POLICY

Section 202 of Pub. L. 93–633 provided that: "The Congress finds that more effective realization of the purposes of the Federal Railroad Safety Act of 1970 [this subchapter] requires that Act [this subchapter] to be amended to mandate comprehensive analysis and evaluation of the rail safety program, to increase the amount and percentage of available resources for inspection, investigation, and enforcement, and to increase the enforcement powers of the Secretary of Transportation."

§ 441. Authorization of appropriations.

(a) There are authorized to be appropriated to carry out the provisions of this subchapter not to exceed $35,000,000 for the fiscal year ending June 30, 1976; and not to exceed $8,750,000 for the transition period of July 1, 1976, through September 30, 1976 (hereafter in this section referred to as the "transition period").

(b) Except as otherwise provided in subsection (c) of this section amounts appropriated under subsection (a) of this section shall be available for expenditure as follows:

(1) For the Office of Safety, including salaries and expenses for up to 500 safety inspectors and up to 110 clerical personnel, not to exceed $18,000,000 for the fiscal year ending June 30, 1976; and not to exceed $4,500,000 for the transition period.

(2) To carry out the provisions of section 435(d) of this title, not to exceed $3,500,000 for the fiscal year ending June 30, 1976; and not to exceed $875,000 for the transition period.

(3) For the Federal Railroad Administration, for salaries and expenses not otherwise provided for, not to exceed $3,500,000 for the fiscal year ending June 30, 1976; and not to exceed $875,000 for the transition period.

(4) For conducting research and development activities under this subchapter, not to exceed $10,000,000 for the fiscal year ending June 30,

1976; and not to exceed $2,500,000 for the transition period.

(c) The aggregate of the amounts obligated and expended for research and development under this subchapter in the fiscal year ending June 30, 1976, and in the transition period, shall not exceed the aggregate of the amounts expended for rail inspection and for the investigation and enforcement of railroad safety rules, regulations, orders, and standards under this subchapter in such fiscal year, and in the transition period, respectively. (As amended Pub. L. 93–90, § 2, Aug. 14, 1973, 87 Stat. 305; Pub. L. 93–633, title II, § 205, Jan. 3, 1975, 88 Stat. 2166; Pub. L. 94–56, § 3, July 19, 1975, 89 Stat. 263.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–56 substituted "subchapter" for "chapter", "June 30, 1976" for "June 30, 1975", and added provision for the expenditure of an amount not to exceed $8,750,000 for the transition period of July 1, 1976, through Sept. 30, 1976.

Subsec. (b). Pub. L. 94–56 substituted "except as otherwise provided in" for "subject to the provisions of".

Subsec. (b)(1). Pub. L. 94–56 increased from 350 to 500 the number of safety inspectors, and from 80 to 110 the number of clerical personnel for the fiscal year ending June 30, 1976, and added provision for expenditure of an amount not to exceed $4,500,000 for the transition period.

Subsec. (b)(2). Pub. L. 94–56 added "for the fiscal year ending June 30, 1976" and provision for expenditure of an amount not to exceed $875,000 for the transition period.

Subsec. (b)(3). Pub. L. 94–56 added "for the fiscal year ending June 30, 1976" and provision for expenditure of an amount not to exceed $875,000 for the transition period.

Subsec. (b)(4). Pub. L. 94–56 substituted "subchapter" for "chapter", added "for the fiscal year ending June 30, 1976" and provision for the expenditure of an amount not to exceed $2,500,000 for the transition period.

Subsec. (c). Pub. L. 94–56 substituted "subchapter" for "chapter" and extended authorization of expenditures from fiscal 1975 to fiscal year ending June 30, 1976, and the transition period, and included rail inspection within activities pursuant to which expenditures were determined.

Pub. L. 93–633 designated existing text as subsec. (a), provided an appropriation authorization of $35,000,000 for fiscal year ending June 30, 1975, and deleted prior provision authorizing appropriation of $19,440,000 for fiscal year ending June 30, 1974, and added subsecs.(b) and (c).

1973—Pub. L. 93–90 substituted authorization of appropriation of amount not exceeding $19,440,000 for the fiscal year ending June 30, 1974, for authorization of appropriations of amount not exceeding $21,000,000 for each of the fiscal years ending June 30, 1971, June 30, 1972 and June 30, 1973.

SHORT TITLE

Section 1 of Pub. L. 93–90 provided: "That this Act [amending this section and former section 1762 of Title 49, and enacting provisions set out as a note under section 1762 of Title 49] may be cited as the 'Federal Railroad Safety Authorization Act of 1973'."

Chapter 14.—RAIL PASSENGER SERVICE

SUBCHAPTER VIII.—MISCELLANEOUS PROVISIONS

Sec.

645. Report by Secretary of Transportation [New].

SUBCHAPTER I.—GENERAL PROVISIONS

§ 501. Congressional findings and declaration of purpose.

SHORT TITLE OF 1975 AMENDMENT

Section 1 of Pub. L. 94–25, May 26, 1975, 89 Stat. 90, provided: "That this Act [amending sections 543, 545, 548, 563, 564, 601, 602 and 621 of this title, and section 1653 of Title 49, Transportation, and repealing sections 581 to 583 of this title] may be cited as the 'Amtrak Improvement Act of 1975'."

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–496, § 1, Oct. 28, 1974, 88 Stat. 1526, provided: "That this Act [enacting section 1643 of Title 49, amending sections 544, 545, 563, 564, 601, 641, and 644 of this title, enacting provision set out as a note under section 645 of this title, and amending provisions set out as a notes under this section, section 5313 of Title 5, section 250 of Title 26, sections 302, 1652, 1653 and 1657 of Title 49] may be cited as the 'Amtrak Improvement Act of 1974'."

SHORT TITLE

Section 1 of Pub. L. 91–518, as amended by Pub. L. 93–496, § 12, Oct. 28, 1974, 88 Stat. 1531, provided: "That this Act [enacting this chapter and section 250 of Title 26, amending section 856 of Title 31, and enacting provision set out as a note under section 250 of Title 26] may be cited as the 'Rail Passenger Service Act'."

§ 502. Definitions.

For the purposes of this chapter—

* * * * *

(5) "Intercity rail passenger service" means all rail passenger service other than commuter and other short-haul service in metropolitan and suburban areas, usually characterized by reduced fare, multiple-ride and commutation tickets, and by morning and evening peak period operations.

* * * * *

(9) "Auto-ferry service" means intercity rail passenger service characterized by transportation of automobiles and their occupants. (As amended Pub. L. 93–146, § 2, Nov. 3, 1973, 87 Stat. 548.)

AMENDMENTS

1973—Par. (5). Pub. L. 93–146, § 2(1), struck out provisions under which auto-ferry service had been included within the term "intercity rail passenger service". See par. (9).

Par. (9). Pub. L. 93–146, § 2(2), added par. (9) consisting of provisions covering auto-ferry service formerly set out in par. (5) but altered by the deletion of requirement that such auto-ferry service be pursuant to contracts consummated prior to enactment of Pub. L. 91–518.

SHORT TITLE OF 1973 AMENDMENT

Section 1 of Pub. L. 93–146 provided: "That this Act [amending this section and sections 543, 545, 546, 548, 561, 562, 563, 564, 601, 602, and 641 of this title and enacting provisions set out as a note under section 543 of this title] may be cited as the 'Amtrak Improvement Act of 1973'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 561 of this title.

SUBCHAPTER III.—NATIONAL RAILROAD PASSENGER CORPORATION

§ 541. Establishment of the corporation.

REFERENCES IN TEXT

The District of Columbia Business Corporation, referred to in text, is act June 8, 1954, ch. 269, 68 Stat. 177, and is classified to chapter 9 (section 29–901 et seq.) of the District of Columbia Code.

CROSS REFERENCES

Inclusion within definition of "mixed-ownership Government corporation", see section 856 of Title 31, Money and Finance.

§ 543. Directors and officers.

(a)(1) The Corporation shall have a board of directors consisting of seventeen individuals who are citizens of the United States selected as follows:

(A) The Secretary of Transportation, ex officio.

(B) Nine members appointed by the President, by and with the advice and consent of the Senate, to serve for terms of four years or until their successors have been appointed and qualified, of whom not more than five shall be appointed from the same political party.

(C) Three members elected annually by the common stockholders of the Corporation.

(D) Four members elected annually by the preferred stockholders of the Corporation, which members shall be elected as soon as practicable after the first issuance of preferred stock by the Corporation.

(2) Any vacancy in the membership of the board shall be filled in the same manner as in the case of the original selection; except that any member appointed by the President under paragraph (1)(B) of this subsection to fill a vacancy shall be appointed only for the unexpired term of the member he is appointed to succeed.

(3) The board shall elect one of its members annually to serve as Chairman.

(4) Not less than three members appointed by the President shall be designated by him, at the time of their appointment, to serve as consumer representatives, of whom not more than two shall be members of the same political party.

(5) Each member not employed by the Federal Government shall receive compensation at the rate of $300 for each meeting of the board he attends. In addition, each member shall be reimbursed for necessary travel and subsistence expenses incurred in attending meetings of the board.

(6) No member elected by railroads shall vote on any action of the board relating to any contract or operating relationship between the Corporation and a railroad, but he may be present at meetings of the board at which such matters are voted upon, and he may be included for purposes of determining a quorum and may participate in discussions at any such meeting.

(7) No member appointed by the President may—

(A) have any direct or indirect financial or employment relationship with any railroad, nor

(B) have any significant direct or indirect financial relationship, or any direct or indirect employment relationship, with any person engaged in the transportation of passengers in competition with the Corporation, during the time that he serves on the board.

(8) Pending the election of the four members by the preferred stockholders of the Corporation under paragraph (1)(D) of this subsection, seven members shall constitute a quorum for the purpose of conducting the business of the board.

(9) Any vacancy in the membership of the board of directors required to be filled by appointment by the President under paragraph (1)(B) of this subsection shall be filled by the President not more than one hundred and twenty days after such vacancy occurs.

* * * * *

(d) Appointment; tenure; duties of president and other officers.

The Corporation shall have a president and such other officers as may be named and appointed by the board. The rates of compensation of all officers shall be fixed by the board. No officer of the Corporation shall receive compensation at a rate in excess of that prescribed for level I of the Executive Schedule under section 5312 of Title 5; except that this limitation upon compensation shall not apply in the case of the president of the Corporation if the board determines with respect to such officer that a higher level of compensation is necessary and is not higher than $85,000 or the general level of compensation paid officers of railroads in positions of comparable responsibility, whichever is lesser. Officers shall serve at the pleasure of the board. No individual other than a citizen of the United States may be an officer of the Corporation. No officer of the Corporation may have any direct or indirect employment or financial relationship with any railroad during the time of his employment by the Corporation. (As amended Pub. L. 92–316, § 1(a), June 22, 1972, 86 Stat. 227; Pub. L. 93–146, § 3(a), Nov. 3, 1973, 87 Stat. 548; Pub. L. 94–25, § 2, May 26, 1975, 89 Stat. 90.)

AMENDMENTS

1975—Subsec. (d). Pub. L. 94–25 added provision excepting from the pay limitations the compensation of the president of the Corporation upon a determination by the board that a higher level of compensation is necessary.

1973—Subsec. (a). Pub. L. 93–146 restructured the Board of Directors by increasing the number of members from 15 to 17, the number of Presidential appointees from 8 to 9, and the number of consumer representatives from 1 to 3, added requirement that the Presidential appointees be on a bi-partisan basis, added a conflict of interest provision prohibiting any Presidential appointee from having any direct or indirect financial or employment relationship with any railroad or significant direct or indirect financial relationship or direct or indirect employment relationship with any person engaged in transportation of passengers in competition with the National Railroad Passenger Corporation, and directed the President to fill all his appointments to the Board within 120 days after vacancies occur.

1972—Subsec. (d). Pub. L. 92–316 prohibited any officer of the Corporation from receiving compensation at a rate in excess of that prescribed for level I of the Executive Schedule.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 13 of Pub. L. 92–316 provided that: "The amendments made by this Act [which enacted section 645 of this title, amended sections 543(d), 545, 546, 548, 562, 563(a), 565, 601, 602, and 644 of this title, and enacted provisions set out as notes under this section and section 602 of this title] shall be effective upon enactment [June 22, 1972]."

TERMINATION OF BOARD OF DIRECTORS SERVING ON NOVEMBER 3, 1973

Section 3(b) of Pub. L. 93–146 provided that:

"(1) Notwithstanding any other provisions of law, the term of each member of the board of directors appointed by the President under section 303(a) of the Rail Passenger Service Act of 1970 [subsec. (a) of this section] (as in effect on the day before the date of enactment of this Act [Nov. 3, 1973]) who is serving under such appointment on such date of enactment [Nov. 3, 1973],

shall expire on the thirtieth day after such date of enactment [Nov. 3, 1973], except that each such member so serving shall continue to serve until his successor is appointed and qualified or until the expiration of the one-hundred-twenty-day period beginning on the thirtieth day after such date of enactment [Nov. 3, 1973], whichever first occurs. No members of the board of directors referred to in the preceding sentence shall be ineligible for appointment as such a member after the date of enactment of this Act [Nov. 3, 1973] solely by reason of the enactment of such preceding sentence.

"(2) Notwithstanding section 303(a)(1)(B) of the Rail Passenger Service Act of 1970 [subsec. (a)(1)(B) of this section], of the members of the board of directors first appointed by the President under such section 303(a)(1)(B) [subsec. (a)(1)(B) of this section], three shall be appointed to serve for terms of two years and three shall be appointed to serve for terms of three years."

COMPENSATION OF OFFICERS OF CORPORATION; REDUCTION; NET PROFITS AS SOURCE FOR PAYMENTS EXCEEDING LEVEL I OF THE EXECUTIVE SCHEDULE

Section 1(b) of Pub. L. 92–316 provided that: "No individual serving as an officer of the National Railroad Passenger Corporation on the date of enactment of this Act [June 22, 1972] shall have his rate of compensation as such officer reduced solely by reason of the enactment of the amendment made by subsection (a) of this section [to subsec. (d) of this section]: *Provided, however,* That compensation to any officer of the Corporation in excess of level I of the Executive Schedule, shall be paid only from net profits of the Corporation."

§ 544. Common and preferred stock.

* * * * *

(b) Limitations on voting common stock.

At no time after the initial issue is completed shall the aggregate of the shares of common stock of the Corporation voted by a single railroad or by any person controlling one or more railroads, as defined in section 1(3)(b) of Title 49, directly or indirectly through subsidiaries or affiliated companies, nominees, or any person subject to its direction or control, exceed 33⅓ per centum of such shares issued and outstanding. If any railroad or any person controlling one or more railroads, as defined in section 1(3)(b) of Title 49, owns, directly or indirectly through subsidiaries or affiliated companies, nominees, or any person subject to its direction or control, a number of shares in excess of 33⅓ per centum of the total number of common shares issued and outstanding, such excess number shall, for voting and quorum purposes, be deemed to be not issued and outstanding.

* * * * *

(As amended Pub. L. 93–496, § 2, Oct. 28, 1974, 88 Stat. 1526.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–496 substituted "voted" for "owned", and added provision relating to the status of those shares in excess of 33⅓ per centum of total shares outstanding, for voting and quorum purposes.

§ 545. General powers.

(a) Corporate powers attendant to operation of intercity trains for the transportation of passengers, mail, and express.

The Corporation is authorized to own, manage, operate, or contract for the operation of intercity trains operated for the purpose of providing modern, efficient intercity transportation of passengers and to carry mail and express on such trains; to conduct research and development related to its mission; and to acquire by construction, purchase, or gift, or to contract for the use of, physical facilities, equipment, and devices necessary to rail passenger operations. Insofar as practicable, the Corporation shall directly operate and control all aspects of its rail passenger service. To carry out its functions and purposes, the Corporation shall have the usual powers conferred upon a stock corporation by the District of Columbia Business Corporation Act.

(b) Revenue increases; auto-ferry service; assistance of Federal departments and agencies.

The Corporation shall take such actions as may be necessary to increase its revenues from the carriage of mail and express. In order to increase revenues and to better accomplish the purposes of this chapter, the Corporation is authorized to modify its services to provide auto-ferry service as a part of the basic passenger services authorized by this chapter, except that nothing contained in this chapter shall prevent any other person, other than a railroad (except that for purposes of this section a person primarily engaged in auto-ferry service shall not be deemed to be a railroad), from providing such auto-ferry service over any route in accordance with a certificate issued by the Commission if—

(1) the Commission finds that such auto-ferry service—

(A) will not impair the ability of the Corporation to reduce its losses or to increase its revenues, and

(B) is required to meet the demands of the public, or

(2) such auto-ferry service is being performed by such person on November 3, 1973, under contracts entered into before October 30, 1970.

Nothing in this section shall be construed to restrict the right of a railroad that has not entered into a contract with the Corporation for the provision of rail passenger service from performing auto-ferry service over its own lines. The Corporation is authorized to acquire, lease, modify, or develop the equipment and facilities required for the efficient provision of mail, express, and auto-ferry service, or to enter into contracts for the provision of such service. Upon request by the Corporation, Federal departments and agencies shall, consistent with the provisions of existing law, provide such assistance as may be necessary in carrying out the purposes of this subsection.

(c) Transportation of elderly or handicapped individuals.

The Corporation is authorized to take all steps necessary to insure that no elderly or handicapped individual is denied intercity transportation on any passenger train operated by or on behalf of the Corporation, including but not limited to, acquiring special equipment and devices and conducting special training for employees; designing and acquiring new equipment and facilities and eliminating architectural and other barriers in existing equipment and facilities to comply with the highest standards for the design, construction, and alteration of

property for the accommodation of elderly and handicapped individuals; and providing special assistance while boarding and alighting and in terminal areas to elderly and handicapped individuals.

(d) Acquisition of property; declaration of taking; property compensation; procedures; transfer of title.

(1) The Corporation is authorized, to the extent financial resources are available—

(A) to acquire any property which the Secretary, acting in furtherance of his responsibility to design and construct an intermodal transportation terminal at Union Station in the District of Columbia, requests, upon assurance of full reimbursement by the Secretary; and

(B) to acquire any right-of-way, land, or other property (except right-of-way, land, or other property of a railroad or property of a State or political subdivision thereof or of any other governmental agency), which is required for the construction of tracks or other facilities necessary to provide intercity rail passenger service;

by the exercise of the right of eminent domain, in accordance with the provisions of this subsection, in the district court of the United States for the judicial district in which such property is located or in any such court if a single piece of property is located in more than one judicial district: *Provided*, That such right may only be exercised when the Corporation cannot acquire such property by contract or is unable to agree with the owner as to the amount of compensation to be paid.

(2) The Corporation shall file with the complaint, or at any time before judgment, a declaration of taking containing or having annexed thereto—

(A) a statement of the public use for which the property is taken;

(B) a description of the property taken sufficient for the identification thereof;

(C) a statement of the estate or interest in the property taken;

(D) a plan showing the property taken; and

(E) a statement of the amount of money estimated by the Corporation to be just compensation for the property taken.

(3) Upon the filing of the declaration of taking and the depositing in the court of the amount of money estimated in such declaration to be just compensation for the property, the property shall be deemed to be condemned and taken for the use of the Corporation. Title to such property shall thereupon vest in the Corporation in fee simple absolute or in any lesser estate or interest specified in the declaration of taking, and the right to the money deposited as estimated just compensation shall immediately vest in the persons entitled thereto. The court, after a hearing, shall make a finding as to the amount of money which constitutes just compensation for such property and shall make an award and enter judgment accordingly. Such judgment shall include, as part of the just compensation awarded, interest on the amount finally awarded as the value of the property on the date of taking minus the amount deposited in the court on such date, at the rate of 6 per centum per annum from the date of taking to the date of payment.

(4) Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding. If the compensation finally awarded exceeds the amount of the money received by any person entitled to compensation, the court shall enter judgment against the Corporation for the amount of the deficiency.

(5) Upon the filing of a declaration of taking, the court may fix the time within which, and the terms upon which, the parties in possession are required to surrender possession to the Corporation. The court may make such orders in respect to encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.

(e) Improvement of service and equipment; research and development; demonstration programs; international rail passenger service; other corporate purposes.

The Corporation is authorized to take all steps necessary to—

(1) establish improved reservations systems and advertising;

(2) service, maintain, repair, and rehabilitate railroad passenger equipment;

(3) conduct research and development and demonstration programs respecting new rail passenger services;

(4) develop and demonstrate improved rolling stock;

(5) establish and maintain essential fixed facilities for the operation of passenger trains on lines and routes included in the basic system, over which no through passenger trains are being operated on October 30, 1970, including necessary track connections between lines on the same or different railroads;

(6) purchase or lease railroad rolling stock;

(7) develop and operate international intercity rail passenger service between points within the United States and points in Canada and Mexico, including Montreal, Canada; Vancouver, Canada; and Nuevo Laredo, Mexico (for purposes of section 564(b) of this title, such international rail passenger service is service included within the basic system); and

(8) to[1] carry out other corporate purposes.

(f) Maintenance, rehabilitation, repair and refurbishment of rail passenger equipment.

The Corporation shall, to the maximum extent practicable, directly perform all maintenance, rehabilitation, repair, and refurbishment of rail passenger equipment. Until the Corporation obtains, by purchase, lease, construction, or any other method of acquisition, Corporation-owned or controlled facilities which are adequate for the proper maintenance, repair, rehabilitation, and refurbishment of the rolling stock and other equipment and facilities of the Corporation, the railroads performing such services shall do so as expeditiously as possible.

(g) Northeast Corridor project; completion and implementation; assistance by Corporation.

The Corporation shall advise, consult and cooperate with, and, upon request, is authorized to as-

[1] So in original.

sist in any other manner the Secretary, the United States Railway Association, the Corps of Engineers, and the Consolidated Rail Corporation in order to facilitate completion and implementation of the Northeast Corridor project, as defined in section 716(a)(3) of this title, by the earliest practicable date. The Secretary shall assign the highest priority to the completion of such project.

(h) Customs inspection and immigration procedures.

The Secretary of the Treasury and the Attorney General shall (consistent with the effective enforcement of the immigration and customs laws) establish and maintain, in cooperation with the Corporation, en route customs inspection and immigration procedures aboard trains operated in international intercity rail passenger service, which procedures will be convenient for passengers and will result in the most rapid possible transit in international intercity rail passenger service. (As amended Pub. L. 92–316, § 2, June 22, 1972, 86 Stat. 228; Pub. L. 93–146, §§ 4–6, Nov. 3, 1973, 87 Stat. 549, 550; Pub. L. 93–496, §§ 3, 4, 6, Oct. 28, 1974, 88 Stat. 1527, 1528; Pub. L. 94–25, § 3, May 26, 1975, 89 Stat. 90.)

REFERENCES IN TEXT

The District of Columbia Business Corporation Act, referred to in subsec. (a), is act June 8, 1954, ch. 269, 68 Stat. 177, and is classified to chapter 9 (section 29–901 et seq.) of the District of Columbia Code.

CODIFICATION

Subsec. (h) was, in the original, designated as "(f)", and has been editorially redesignated to conform to the probable intent of Congress.

AMENDMENTS

1975—Subsec. (h). Pub. L. 94–25 added provision requiring the added cooperation of the Attorney General in establishing, consistent with customs and immigration laws, an on-board immigration procedure so as to insure the most rapid possible intercity transit service.

1974—Subsec. (d)(1). Pub. L. 93–496, § 6, generally reorganized material by designating existing provisions as subpar. (B) and material following subpar. (B), and added subpar. (A), and in the material following subpar. (B) added "for the judicial district" following "in the district court of the United States".

Subsecs. (f), (g). Pub. L. 93–496, § 3, added subsecs. (f) and (g).

Subsec. (h). Pub. L. 93–496, § 4, added subsec. (h).

1973—Subsec. (a). Pub. L. 93–146, § 4, struck out requirement that the Corporation rely, consistent with prudent management of the affairs of the Corporation, upon railroads to provide the employees necessary to the operation and maintenance of its passenger trains and to the performance of all services and work incidental thereto, to the extent that the railroads are able to provide such employees and services in an economic and efficient manner.

Subsec. (b). Pub. L. 93–146, § 5, inserted provisions relating to auto-ferry service and substitute provisions authorizing the Corporation to acquire, lease, modify, or develop the equipment and facilities required for the efficient provision of mail, express, and auto-ferry services, or to enter into contracts providing such services for provisions authorizing and directing the Corporation to acquire the equipment or to modify existing equipment for the efficient carriage of mail and express.

Subsecs. (c)–(e). Pub. L. 93–146, § 6, added subsecs. (c) to (e).

1972—Subsec. (a). Pub. L. 92–316, § 2(1), (2), designated existing provisions as subsec. (a) and required the Corporation, insofar as practicable, to directly operate and control all aspects of its rail passenger service.

Subsec. (b). Pub. L. 92–316, § 2(3), added subsec. (b).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–316 effective June 22, 1972, see section 13 of Pub. L. 92–316, set out as a note under section 543 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 561, 562, 565 of this title.

§ 546. Laws applicable.

(a) Corporation deemed common carrier subject to Interstate Commerce Act; exceptions.

The Corporation shall be deemed a common carrier by railroad within the meaning of section 1(3) of Title 49 and shall be subject to all provisions, including the provisions of section 22(1) of Title 49 other than those pertaining to—

* * * * *

(f) Travel by train.

All departments, agencies, and instrumentalities of the Federal Government shall, in authorizing travel in the continental United States for their employees or for members of the Armed Forces or commissioned services, treat travel by train (whether or not extra fare trains) on the same basis as travel by other authorized modes.

(g) Provisions of Freedom of Information Act.

The Corporation shall be subject to the provisions of section 552 of Title 5.

(h) Auto-ferry service; pre-emption of State law.

No common carrier by railroad may refuse to participate with the Corporation in providing auto-ferry service on the grounds that a State or local law or regulation makes the service unlawful; and neither the Corporation nor such railroad shall be subject to any fine, penalty, or other sanction for violation of a State or local law or regulation which has the effect of prohibiting or impairing the provision of auto-ferry service. (As amended Pub. L. 92–316, § 3, June 22, 1972, 86 Stat. 228; Pub. L. 93–146, §7, Nov. 3, 1973, 87 Stat. 551.)

AMENDMENTS

1973—Subsec. (h). Pub. L. 93–146 added subsec. (h).

1972—Subsec. (a). Pub. L. 92–316, § 3(a), inserted reference to the provisions of section 22(1) of the Interstate Commerce Act.

Subsecs. (f), (g). Pub. L. 92–316, § 3(b), added subsecs. (f) and (g).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–316 effective June 22, 1972, see section 13 of Pub. L. 92–316, set out as a note under section 543 of this title.

§ 548. Reports to the President and the Congress.

(a)(1) Not later than the eightieth day following the end of each calendar month, the Corporation shall transmit to the Congress and release to the public the following information applicable to its operations for such calendar month:

(A) Total itemized revenues and expenses.

(B) Revenues and expenses of each train operated.

(C) Revenues and total expenses attributable to each railroad over which service is provided.

(2) Not later than the fifteenth day following the

end of each calendar month, the Corporation shall transmit to the Congress and release to the public the following information applicable to its operations for such calendar month:

(A) The average number of passengers per day on board each train operated.

(B) The on-time performance at the final destination of each train operated, by route and by railroad.

(b) The Corporation shall transmit to the President and to the Congress by February 15 of each year (beginning with 1973), and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments under this chapter, including a statement of receipts and expenditures for the preceding fiscal year. At the time of its annual report, the Corporation shall submit such legislative recommendations as it deems desirable, including the amount of financial assistance needed for operations and for capital improvements, the manner and form in which the amount of such assistance should be computed, and the sources from which such assistance should be derived.

(c) The Secretary and the Commission shall transmit to the President and to the Congress by March 15 of each year (beginning with 1974) reports (or, in their discretion, a joint report) on the effectiveness of this chapter in meeting the requirements for a balanced national transportation system, together with any legislative recommendations. Beginning in 1976, the Secretary's report on the Corporation shall be made part of the Department of Transportation annual report to the Congress. (As amended Pub. L. 92–316, § 4, June 22, 1972, 86 Stat. 228; Pub. L. 93–146, § 8, Nov. 3, 1973, 87 Stat. 551; Pub. L. 94–25, § 4, May 26, 1975, 89 Stat. 90.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–25, § 4(a), substituted "the preceding fiscal year" for "the preceding year".

Subsec. (c). Pub. L. 94–25, § 4(b), added provision making the Secretary's report on the Corporation part of the annual report of the Department of Transportation, beginning in 1976.

1973—Subsec. (b). Pub. L. 93–146 substituted "February 15" for "January 15".

1972—Subsec. (a). Pub. L. 92–316 added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 92–316 redesignated former subsec. (a) as (b) and substituted provision for transmission of report "by January 15 of each year (beginning with 1973)" for prior provision for such transmission", annually, commencing one year from October 30, 1970". Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 92–316 redesignated former subsec. (b) as (c), substituted provision for transmission of reports "by March 15 of each year (beginning with 1974)" for prior provision for such transmission, "one year following October 30, 1970, and biennially thereafter,", authorized transmission of a joint report, and deleted provision for reports on the state of rail passenger service.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–316 effective June 22, 1972, see section 13 of Pub. L. 92–316, set out as a note under section 543 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 644 of this title.

SUBCHAPTER IV.—PROVISION OF RAIL PASSENGER SERVICES

§ 561. Assumption of intercity rail passenger service by the Corporation.

(a) Contracts; passenger deficit payments; determination of the amount; referral to the Interstate Commerce Commission; payment schedule.

(1) On or before May 1, 1971, the Corporation is authorized to contract and, upon written request therefor from a railroad, shall tender a contract to relieve the railroad, from and after May 1, 1971, of its entire responsibility for the provision of intercity rail passenger service. On or after March 1, 1973, but before January 1, 1975, the Corporation is authorized to contract, and upon written request therefor, shall tender a contract to relieve the railroad of its entire responsibility for the provision of intercity rail passenger service and such relief shall become effective upon the date on which such contract is entered into. Contracts may be entered into on or before May 1, 1971, notwithstanding the fact that the decision of the Commission under section 502(6) of this title with respect to avoidable loss has not become final. Any contract entered into before such decision of the Commission has become final shall be subject to adjustment to assure that the contract is consistent with such final decision of the Commission. The contract may be made upon such terms and conditions as necessary to permit the Corporation to undertake passenger service on a timely basis. Upon its entering into a valid contract (including protective arrangements for employees), the railroad shall be relieved of all its responsibilities as a common carrier of passengers by rail in intercity rail passenger service under part I of the Interstate Commerce Act or any State or other law relating to the provision of intercity passenger service: *Provided,* That any railroad discontinuing a train hereunder must give notice in accordance with the notice procedures contained in section 13a(1) of Title 49.

* * * * *

(c) Others prohibited from conducting intercity rail passenger service.

Except as provided in section 545(b) of this title concerning auto-ferry service, no railroad or any other person may, without the consent of the Corporation, conduct intercity rail passenger service over any route over which the Corporation is performing scheduled intercity rail passenger service pursuant to a contract under this section. (As amended Pub. L. 93–146, § 9, Nov. 3, 1973, 87 Stat. 551.)

CODIFICATION

Subsec. (a)(1) of this section is set out in this Supplement to correct a typographical error by substituting "provision of intercity rail passenger service" for "provision in intercity rail passenger service" in the second sentence.

AMENDMENTS

1973—Subsec. (c). Pub. L. 93–146 substituted "Except as provided in section 545(b) of this title concerning auto-ferry service, no railroad or any other person" for "No railroad or any other person".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 565 of this title; title 26 section 250.

§ 562. Facilities and service agreements.

(a) Contracts with railroads or regional transportation agencies; authority of Interstate Commerce Commission; fixing of compensation.

The Corporation may contract with railroads or with regional transportation agencies for the use of tracks and other facilities and the provision of services on such terms and conditions as the parties may agree. In the event of a failure to agree, the Interstate Commerce Commission shall, within ninety days after application by the Corporation, if it finds that doing so is necessary to carry out the purposes of this chapter, order the provision of services or the use of tracks or facilities of the railroad by the Corporation, on such terms and for such compensation as the Commission may fix as just and reasonable, and the rights of the Corporation to such services or to the use of tracks or facilities of the railroad or agency under such order or under an order issued under subsection (b) of this section shall be conditioned upon payment by the Corporation of the compensation fixed by the Commission. In fixing just and reasonable compensation for the provision of services ordered by the Commission under the preceding sentence, the Commission shall, in fixing compensation in excess of incremental costs, consider quality of service as a major factor in determining the amount (if any) of such compensation. If the amount of compensation fixed is not duly and promptly paid, the railroad or agency entitled thereto may bring an action against the Corporation to recover the amount properly owed.

(b) Immediate availability of tracks and other facilities.

To facilitate the initiation of operations by the Corporation within the basic system, the Commission shall, upon application by the Corporation, require a railroad to make immediately available tracks and other facilities. The Commission shall thereafter promptly proceed to fix such terms and conditions as are just and reasonable.

(c) Emergency measures.

To facilitate such operations by the Corporation as may be deemed by it to be necessary in an emergency, the Commission shall, upon application by the Corporation, require a railroad to make immediately available tracks and other facilities for the duration of such emergency. The Commission shall thereafter promptly proceed to fix such terms and conditions as are just and reasonable including indemnification of the railroad by the Corporation against any casualty risk to which it may be exposed.

(d) Disagreement procedures.

(1) If the Corporation and a railroad are unable to agree upon terms for the sale to the Corporation of property (including interests in property) owned by the railroad and required for the construction of tracks or other facilities necessary to provide intercity rail passenger service, the Corporation may apply to the Commission for an order establishing the need of the Corporation for the property at issue and requiring the conveyance thereof from the railroad to the Corporation on reasonable terms and conditions, including just compensation. Unless the Commission finds that—

(A) conveyance of the property to the Corporation would significantly impair the ability of the railroad to carry out its obligations as a common carrier; and

(B) the obligations of the Corporation to provide modern, efficient, and economical rail passenger service can adequately be met by the acquisition of alternative property (including interests in property) which is available for sale on reasonable terms to the Corporation, or available to the Corporation by the exercise of its authority under section 545(d) of this title,

the need of the Corporation for the property shall be deemed to be established and the Commission shall order the conveyance of the property to the Corporation on such reasonable terms and conditions as it may prescribe, including just compensation.

(2) The Commission shall expedite proceedings under this subsection and, in any event, issue its order within one hundred and twenty days from receipt of the application from the Corporation. If just compensation has not been determined on the date of the order, the order shall require, as part of just compensation, interest at the rate of 6 per centum per annum from the date prescribed for conveyance until just compensation is paid.

(e) Preferences for intercity passenger trains.

(1) Except in an emergency, intercity passenger trains operated by or on behalf of the Corporation shall be accorded preference over freight trains in the use of any given line of track, junction, or crossing, unless the Secretary has issued an order to the contrary in accordance with paragraph (2) of this subsection.

(2) Any railroad whose rights with regard to freight train operation are effected by paragraph (1) of this subsection may file an application with the Secretary requesting appropriate relief. If, after hearing under section 553 of Title 5, the Secretary finds that adherence to such paragraph (1) will materially lessen the quality of freight service provided to shippers, the Secretary shall issue an order fixing rights of trains, on such terms and conditions as are just and reasonable.

(f) Accelerated speeds.

If, upon request of the Corporation, a railroad refuses to permit accelerated speeds by trains operated by or on behalf of the Corporation, the Corporation may apply to the Secretary for an order requiring the railroad to permit such accelerated speeds. The Secretary shall make findings as to whether such accelerated speeds are unsafe or otherwise impracticable, and with respect to the nature and extent of improvements to track, signal systems, and other facilities that would be required to make such accelerated speeds safe and practicable. After hearing, the Secretary shall issue an order fixing maximum permissible speeds of Corporation trains, on such terms and conditions as he shall find to be just and reasonable. (As amended Pub. L. 92–316, § 5, June 22, 1972, 86 Stat. 229; Pub. L. 93–146, § 10, Nov. 3, 1973, 87 Stat. 552.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–146, § 10(1), inserted provision directing the Interstate Commerce Commission to consider quality of service as a major factor in determining the amount of compensation in excess of incremental costs.

Subsecs. (d)–(f). Pub. L. 93–146, § 10(2), added subsecs. (d) to (f).

1972—Subsec. (a). Pub. L. 92–316, § 5(1), inserted "within ninety days after application by the Corporation," following "Interstate Commerce Commission shall," in the second sentence.

Subsec. (c). Pub. L. 92–316, § 5(2), added subsec. (c).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–316 effective June 22, 1972, see section 13 of Pub. L. 92–316, set out as a note under section 543 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 565 of this title.

§ 563. Rail service beyond basic system.

(a) Authority to operate; designation of such service as part of basic system.

The Corporation may provide intercity rail passenger service in excess of that prescribed for the basic system, either within or outside the basic system, where the Corporation, based on its own or available marketing studies or other similar reports or information, determines that experimental or expanded service would be justified, if consistent with prudent management. In determining the establishment of the additional routes, the Corporation shall take into account the current and the estimated future population and economic conditions of the points to be served, the adequacy of alternative modes of transportation available to those points, and the cost of adding the service. The Corporation shall cooperate with State, regional, and local agencies to encourage the use of trains established under this subsection and shall make reasonable efforts to assure high quality of customer services. Any intercity rail passenger service provided under this subsection for a continuous period of two years shall be designated by the Secretary as a part of the basic system.

(b) Request for additional services; prerequisites to institution of services.

Any State, regional, or local agency may request of the Corporation rail passenger service beyond that included within the basic system. The Corporation shall institute such service if the State, regional, or local agency agrees to reimburse the Corporation for 66⅔ per centum of the solely related costs and associated capital costs of such service, including interest on passenger equipment, less revenues attributable to such service. The Corporation, at the request of States, may conduct studies during the fiscal year ending June 30, 1976, to determine benefits of seasonal routes to recreational areas.

(c) Experimental routes; priority of routes.

The Corporation shall initiate not less than one experimental route each year, such route to be designated by the Board of Directors, and shall operate such route for not less than two years. After such two-year period, the Secretary, in consultation with the Board of Directors, shall terminate such route if he finds that it has attracted insufficient patronage to serve the public convenience and necessity, or he may designate such route as a part of the basic system. In carrying out the provisions of this subsection, the Board of Directors shall give priority to experimental routes designed to extend intercity rail passenger service to the major population area of each of the contiguous 48 States which does not have such service to any large population area designated as part of the basic system. (As amended Pub. L. 92–316, § 6, June 22, 1972, 86 Stat. 229; Pub. L. 93–146, § 11(a), Nov. 3, 1973, 87 Stat. 553; Pub. L. 93–496, § 5, Oct. 28, 1974, 88 Stat. 1527; Pub. L. 94–25, §§ 5, 6, May 26, 1975, 89 Stat. 90.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–25, § 6, added provision relating to studies by the Corporation during the fiscal year 1976 for the determination of benefits of seasonal routes to recreational areas.

Subsec. (c). Pub. L. 94–25, § 5, substituted "route to be designated by the Board of Directors" for "route to be designated by the Secretary", "the Board of Directors shall give priority" for "the Secretary shall give priority", and added ", in consultation with the Board of Directors," after "After such two-year period, the Secretary".

1974—Subsec. (b). Pub. L. 93–496, § 5(a), substituted "66⅔ per centum of the solely related costs and associated capital costs of such service, including interests on passenger equipment, less revenues attributable to such service." for "a reasonable portion of any losses associated with such services.".

Subsec. (c). Pub. L. 93–496, § 5 (a), (b), redesignated former subsec. (d) as (c), and inserted provision relating to priority of experimental routes designed to extend intercity rail passenger service to the major population areas of the contiguous 48 States which do not have such service as part of the basic system. Former subsec. (c), relating to the reasonable portion of losses to be assumed by the State, regional, or local agency, and referral to the Secretary in case of disagreement, was omitted.

Subsec. (d). Pub. L. 93–496, § 5(b), redesignated former subsec. (d) as (c).

1973—Subsec. (d). Pub. L. 93–146 added subsec. (d).

1972—Subsec. (a). Pub. L. 92–316 substituted "where the Corporation, based on its own or available marketing studies or other similar reports or information, determines that experimental or expanded service would be justified", for "including the operation of special and extra passenger trains", prescribed criteria for establishment of additional routes, and provided for cooperation of the Corporation with State, regional, and local agencies to encourage use of trains and for reasonable efforts by the Corporation to assure high quality of customer services.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–316 effective June 22, 1972, see section 13 of Pub. L. 92–316, set out as a note under section 543 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 502, 564, 601 of this title.

§ 564. Addition to or discontinuance of routes and services.

* * * * *

(b)(1) The Corporation must provide the service included within the basic system until October 1, 1976, to the extent it has assumed responsibility for such service by contract with a railroad pursuant to section 561 of this title.

(2) Except as otherwise provided in this paragraph and in section 563(a) of this title, service beyond that prescribed for the basic system undertaken by the Corporation upon its own initiative may be discontinued at any time. No such service under taken by the Corporation on or after January 1, 1973, shall be discontinued until March 1, 1977.

(3) If at any time after October 1, 1976, the Corporation determines that any train or trains in the basic system in whole or in part are not required by public convenience and necessity, or will impair the ability of the Corporation to adequately provide other services, such train or trains may be discontinued under the procedures of section 13a of Title 49: *Provided, however,* That at least thirty days prior to any change or discontinuance, in whole or in part, of any service under this subsection, the Corporation shall mail to the Governor of each State in which the train in question is operated, and post in every station, depot, or other facility served thereby notice of the proposed change or discontinuance. The Corporation may not change or discontinue this service if prior to the end of the thirty-day notice period, State, regional, or local agencies request continuation of the service and within ninety days agree to reimburse the Corporation for a reasonable portion of any losses associated with the continuation of service beyond the notice period.

* * * * *

(c)(1) Within 120 days after May 26, 1975, the board of directors of the Corporation shall study, develop, and submit to the Secretary, to the Commission, and to the Congress an initial proposal setting forth criteria and procedures under which the Corporation would be authorized to add or discontinue routes and services. Such criteria and procedures shall include, but need not be limited to—

(A) methods for evaluating the economic and environmental impact of any addition or discontinuance of intercity rail passenger service including an evaluation of the economic impact to the Corporation and to the nation of the addition of new service points along existing or new intercity routes within the Northeast Corridor;

(B) methods for evaluating the effects of any such addition or discontinuance on connecting parts of the national system of intercity rail passenger service;

(C) methods for estimating, with respect to any such addition or discontinuance, the population to be affected, the demand for intercity rail passenger service, the revenue per passenger mile, and the effect on capital costs and revenue of the Corporation;

(D) methods for evaluating the availability of alternative modes of transportation;

(E) methods for giving public notice of, and obtaining public comments on, any such addition or discontinuance; and

(F) methods for establishing a priority ranking system for routes and trains to meet the needs of the public convenience and necessity for a balanced transportation system, taking into consideration the criteria and procedures referred to in subparagraphs (A) through (E) of this paragraph, together with such other criteria as the board of directors deems appropriate.

(2) Within 150 days after May 26, 1975, the Secretary and the Commission shall submit to the Congress and to the board of directors of the Corporation their comments on the initial proposal setting forth criteria and procedures developed by the board of directors of the Corporation, together with such recommendations as they may deem appropriate.

(3) Within 30 days after receipt of comments submitted by the Secretary and the Commission under paragraph (2) of this subsection, the board of directors of the Corporation shall consider such comments and shall submit to the Congress a final proposal setting forth criteria and procedures under which the Corporation would be authorized to add or discontinue routes and services within the national system of intercity rail passenger service. The criteria and procedures set forth in such final proposal shall take effect at the end of the first period of 60 calendar days of continuous session of the Congress after the date of its submission, unless either the Senate or the House of Representatives adopts a resolution during such period stating that it does not approve such final proposal. If no resolution is adopted as provided in the preceding sentence, the Corporation may add or discontinue routes and services in accordance with the criteria and procedures set forth in the final proposal, notwithstanding the provisions of section 13a of Title 49 or of subsection (b)(3) of this section, relating to discontinuance of service within the basic system. Service beyond the basic system referred to in subsection (b)(2) of this section shall not be discontinued under this subsection until March 1, 1977. For purposes of this paragraph, continuity of session of the Congress is broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded from the computation of the 60-day period. (As amended Pub. L. 93–146, § 11(b), Nov. 3, 1973, 87 Stat. 553; Pub. L. 93–496, § 7, Oct. 28, 1974, 88 Stat. 1530; Pub. L. 94–25, §§ 7, 8, May 26, 1975, 89 Stat. 90.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–25, § 7, substituted "October 1, 1976" for "July 1, 1975" in pars. (1) and (3), and "March 1, 1977" for "July 1, 1975" in par. (2).

Subsec. (c). Pub. L. 94–25, § 8, added subsec. (c).

1974—Subsec. (b). Pub. L. 93–496 substituted "July 1, 1975" for "July 1, 1974" in pars. (1) and (3), and substituted "July 1, 1975" for "the expiration of the one-year period beginning on November 3, 1973" in par. (2).

1973—Subsec. (b)(1). Pub. L. 93–146, § 11(b)(1), substituted "July 1, 1974" for "July 1, 1973".

Subsec. (b)(2). Pub. L. 93–146, § 11(b)(2), added requirement that service undertaken by the Corporation on or after January 1, 1973, beyond that prescribed for the basic system be continued at least through the one year period beginning on November 3, 1973.

Subsec. (b)(3). Pub. L. 93–146, § 11(b)(3), substituted "July 1, 1974" for "July 1, 1973".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 545, 601 of this title.

§ 565. Protective arrangements for employees.

(a) Duty of railroads; discontinuance of intercity rail passenger service.

A railroad shall provide fair and equitable arrangements to protect the interests of employees, including employees of terminal companies, affected by a discontinuance of intercity rail passenger service whether occurring before, on, or after January 1, 1975. A "discontinuance of intercity rail passenger service" shall include any discontinuance of service performed by railroad under any facility

or service agreement under sections 545 and 562 of this title pursuant to any modification or termination thereof or an assumption of operations by the Corporation.

(b) Substantive requirements for protection.

Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) to such employees under existing collective-bargaining agreements or otherwise; (2) the continuation of collective-bargaining rights; (3) the protection of such individual employees against a worsening of their positions with respect to their employment; (4) assurances of priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of Title 49. Any contract entered into pursuant to the provisions of this subchapter shall specify the terms and conditions of such protective arrangements. No contract under section 561(a)(1) of this title between a railroad and the Corporation may be made unless the Secretary of Labor has certified to the Corporation that the labor protective provisions of such contract afford affected employees, including affected terminal employees, fair and equitable protection by the railroad.

(c) Commencement of protection.

Upon commencement of operations in the basic system, the substantive requirements of subsections (a) and (b) of this section shall apply to the Corporation and its employees in order to insure the maintenance of the protective arrangements specified in such subsections, except that nothing in this subsection shall be construed to impose upon the Corporation any obligation of a railroad with respect to any right, privilege, or benefit earned by any employee as a result of prior service performed for such railroad. The Secretary of Labor shall certify that affected employees of the Corporation have been provided fair and equitable protection as required by this section within one hundred and eighty days after assumption of operations by the Corporation.

* * * * *

(f) Free or reduced-rate transportation for railroad employees; single systemwide schedule of terms and compensation; reimbursement of Corporation by railroads; agreements for expenses; decision of Commission respecting payments issue; reimbursement of railroads not under contract with Corporation for acceptance of schedule specified in agreements; "railroad employee" defined.

The Corporation shall take such action as may be necessary to assure that, to the maximum extent practicable, any railroad employee eligible to receive free or reduced-rate transportation by railroad on April 30, 1971, under the terms of any policy or agreement in effect on such date will be eligible to receive, provided space is available, free or reduced-rate transportation on any intercity rail passenger service provided by the Corporation under this chapter, on terms similar to those available on such date to such railroad employee under such policy or agreement. However, the Corporation may apply to all railroad employees eligible to receive free or reduced-rate transportation under such policies or agreements, a single systemwide schedule of terms determined by the Corporation to reflect terms applicable to the majority of such employees under those policies or agreements in effect on April 30, 1971. The Corporation shall be reimbursed by the railroads by way of payment or offset for such costs as may be incurred in providing transportation services to railroad employees under any policy or agreement referred to in the first sentence of this subsection, including the costs of implementing and administering this section. Within ninety days after the enactment of this sentence, each railroad shall enter into an agreement with the Corporation for the payment of such expenses. If the Corporation and a railroad are unable to agree as to the amount of any payment owed by the railroad under this subsection, the matter shall be referred to the Commission for decision. The Commission, upon investigation, shall decide the issue within ninety days following the date of referral, and its decision shall be binding on both parties. If any railroad company which operates intercity passenger service not under contract with the Corporation notifies the Corporation and railroads which have entered into the agreement specified above that it will accept the terms of the systemwide schedule of terms and the compensation specified in the agreements, such railroad company shall be reimbursed for services to railroad employees in accordance with the agreements. As used in this subsection, the term "railroad employee" means (1) an active full-time employee, including any such employee during a period of furlough or while on leave of absence, of a railroad or terminal company, (2) a retired employee of a railroad or terminal company, and (3) the dependents of any employee referred to in clause (1) or (2) of this sentence. (As amended Pub. L. 92–316, §§ 7, 8, June 22, 1972, 86 Stat. 230.)

REFERENCES IN TEXT

Enactment of this sentence, referred to in subsec. (f), means June 22, 1972, date of approval of Pub. L. 92–316.

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–316, § 7(a), provided for protection of interests of employees of terminal companies and defined term "discontinuance of intercity rail passenger service".

Subsec. (b). Pub. L. 92–316, § 7(b), required certification of fair and equitable protection by railroad to affected terminal employees in the labor protective provisions of contract between railroad and the Corporation.

Subsec. (c). Pub. L. 92–316, § 7(c), substituted introductory "Upon" for "After", included reference to subsec. (a), provided for application of substantive requirements "in order to insure the maintenance of the protective arrangements specified in such subsections, except that nothing in ths subsection shall be construed to impose upon the Corporation any obligation of a railroad with respect to any right, privilege, or benefit earned by any employee as a result of prior service performed for such railroad', and substituted requirement for certification within one hundred and eighty days after assumption of operations by the Corporation, for prior provision for certification as a condition to the comple-

tion of any transaction requiring fair and equitable protection.

Subsec. (f). Pub. L. 92–316, § 8, added subsec. (f).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–316 effective June 22, 1972, see section 13 of Pub. L. 92–316, set out as a note under section 543 of this title.

SUBCHAPTER V.—FINANCIAL INVESTMENT ADVISORY PANEL

§§ 581 to 583. Repealed. Pub. L. 94–25, § 9, May 26, 1975, 89 Stat. 92.

Section 581, Pub. L. 91–518, title V, § 501, Oct. 30, 1970, 84 Stat. 1338, provided for the appointment of a fifteen-man financial advisory panel by the President.

Section 582, Pub. L. 91–518, title V, § 502, Oct. 30, 1970, 84 Stat. 1338, directed the advisory panel to advise the directors of the Corporation on ways and means of increasing capitalization of the Corporation.

Section 583, Pub. L. 91–518, title V, § 503, Oct. 30, 1970, 84 Stat. 1338, provided for a report to Congress by the advisory panel, evaluating the initial capitalization of the Corporation, and the prospects for increasing its capitalization.

SUBCHAPTER VI.—FEDERAL FINANCIAL ASSISTANCE

§ 601. Authorization of appropriations.

(a) There are authorized to be appropriated to the Secretary for the benefit of the Corporation in fiscal year 1971, $40,000,000, and in subsequent fiscal years through June 30, 1975, a total of $597,300,000. There are authorized to be appropriated to the Secretary for the benefit of the Corporation (1) for the payment of operating expenses for the basic system, and for operating and capital expenses of intercity rail passenger service provided pursuant to section 563(b) of this title, $350,000,000 for fiscal year 1976, $105,000,000 for the transition period of July 1, 1976, through September 30, 1976 (hereafter in this section referred to as the "transition period") and $355,000,000 for fiscal year 1977; and (2) for the payment of capital expenditures of the basic system, $110,000,000 for fiscal year 1976; $25,000,000 for the transition period; and $110,000,000 for fiscal year 1977. Of the amounts authorized by clause (1) of the preceding sentence, not more than $25,000,000 for fiscal year 1976, $7,000,000 for the transition period, and $30,000,000 for fiscal year 1977 shall be available for payment of operating and capital expenses of intercity rail passenger service provided pursuant to section 563(b) of this title. Funds appropriated pursuant to such authorization shall be made available to the Secretary during the fiscal year for which appropriated and shall remain available until expended. Such sums shall be paid by the Secretary to the Corporation for expenditure by it in accordance with spending plans approved by Congress at the time of appropriation and general guidelines established annually by the Secretary. Payments by the Secretary to the Corporation of appropriated funds shall be made no more frequently than every 90 days, unless the Corporation, for good cause, requests more frequent payment before the expiration of any 90-day period.

(b)(1) Whenever the Corporation submits any budget estimate or request to the President, the Department of Transportation, or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

(2) Whenever the Corporation submits any legislative recommendation, proposed testimony, or comments on legislation to the President, the Department of Transportation, or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Corporation to submit its legislative recommendations, proposed testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. (As amended Pub. L. 92–316, § 9, June 22, 1972, 86 Stat. 231; Pub. L. 93–146, § 12, Nov. 3, 1973, 87 Stat. 553; Pub. L. 93–496, § 8, Oct. 28, 1974, 88 Stat. 1530; Pub. L. 94–25, § 10, May 26, 1975, 89 Stat. 92.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–25 substituted "in subsequent fiscal years through June 30, 1975, a total of $597,300,000" for "in subsequent fiscal years, a total of $534,300,000", and added provisions authorizing appropriations for the payment of operating expenses for the basic system and for operating and capital expenses of intercity rail passenger service provided pursuant to section 563(b) of this title.

1974—Subsec. (a). Pub. L. 93–496 substituted "$534,300,000" for "$334,300,000", and added provision relating to the frequency of payments by the Secretary to the Corporation.

1973—Subsec. (a). Pub. L. 93–146 increased from "$225,000,000" to "$334,300,000" the amount authorized to be appropriated for the fiscal years subsequent to fiscal year 1971 and substituted a direction that appropriated funds be spent in accordance with spending plans approved by Congress at the time of appropriation and with general guidelines established annually by the Secretary for an enumeration of eight purposes for which appropriated funds might be spent. The enumerated purposes were transferred to section 545(e) of this title.

Subsec. (b). Pub. L. 93–146 substituted provisions requiring the transmittal to Congress of a copy of any budget estimate or request of legislative recommendation, proposed testimony, or comments on legislation submitted by the Corporation to the President, the Department of Transportation, or the Office of Management and Budget for provisions authorizing appropriations for the development and operation of international rail passenger service. Provisions covering the development and operation of international rail passenger service were transferred to section 545(e) of this title.

1972—Subsec. (a). Pub. L. 92–316 designated existing provisions as subsec. (a), authorized appropriation of total of $225,000,000 for fiscal years subsequent to fiscal year 1971, provided in opening text for expenditures pursuant to terms and conditions prescribed by the Secretary and in cl. (3) for rehabilitation of equipment, and added cls. (7) and (8).

Subsec. (b). Pub. L. 92–316 added subsec. (b).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–316 effective June 22, 1972, see section 13 of Pub. L. 92–316, set out as a note under section 543 of this title.

§ 602. Guarantee of loans.

(a) The Secretary is authorized, on such terms and conditions as he may prescribe, and with the approval of the Secretary of the Treasury, to guarantee any lender or lessor against loss of principal and interest or other contractual commitments, including rentals, on securities, obligations, leases, or loans (including refinancing thereof) issued to finance the upgrading of roadbeds, and the purchase

or lease by the Corporation or an agency of new rolling stock, rehabilitation of existing rolling stock, reservation systems, switch and signal systems, and other capital equipment and facilities necessary for the improvement of rail passenger service. The maturity date or term of such securities, obligations, leases, or loans, including all extensions and renewals thereof, shall not be later than 20 years from their date of issuance.

(b) All guarantees entered into by the Secretary under this section shall constitute general obligations of the United States of America backed by the full faith and credit of the Government of the United States of America.

(c) Any guarantee made by the Secretary under this section shall not be terminated, canceled or otherwise revoked; shall be conclusive evidence that such guarantee complies fully with the provisions of this chapter and of the approval and legality of the principal amount, interest rate, lease rate, and all other terms of the securities, obligations, leases, or loans and of the guarantee, and shall be valid and incontestable in the hands of a holder of a guaranteed security, obligation, lease, or loan, except for fraud or material misrepresentation on the part of such holder.

(d) The aggregate unpaid principal amount of securities, obligations, leases, or loans outstanding at any one time, which are guaranteed by the Secretary under this section, may not exceed $900,000,000. The Secretary shall prescribe and collect a reasonable annual guaranty fee.

(e) There are authorized to be appropriated to the Secretary such amounts, to remain available until expended, as are necessary to discharge all his responsibilities under this section.

(f) It at any time the moneys available to the Secretary are insufficient to enable him to discharge his responsibilities under guarantees issued by him under subection (a) of this section, he shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Secretary from appropriations available under subsection (e) of this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations as acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(g) Notwithstanding any other provision of this chapter, a guarantee may not be made of any security, obligation, lease, or loan, if the nature of such security, obligation, lease, or loan is such that the income therefrom is not includable in gross income for the purposes of chapter 1 of Title 26.

(h) The Secretary shall, within 180 days after October 28, 1974, issue general guidelines designed to assist the Corporation in the formulation of capital and budgetary plans.

(i) Any request made by the Corporation for the guarantee of a lease or loan pursuant to this section, which has been approved by the Board of Directors of the Corporation, shall be approved by the Secretary if, in the discretion of the Secretary, such request falls within the approved capital and budgetary guidelines issued under subsection (h) of this section. (As amended Pub. L. 92–316, § 10(a), June 22, 1972, 86 Stat. 231; Pub. L. 93–146, § 13, Nov. 3, 1973, 87 Stat. 553; Pub. L. 93–496, § 9, Oct. 28, 1974, 88 Stat. 1531; Pub. L. 94–25, § 11, May 26, 1975, 89 Stat. 92.)

REFERENCES IN TEXT

The Second Liberty Bond Act, as amended, referred to in subsec (f), is act Sept. 24, 1917, ch. 56, 40 Stat. 288, as amended, which is classified to section 745, former section 747, sections 752, 752a, 753, 754, 754a, 754b, 757, 757b, and 757c, former section 757c–1, sections 757c–2, 757c–3, 757c–4, 757d, 757e, 758, 760, and 764, former section 765, and sections 766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–25, § 11(1), added provision requiring the approval of the Secretary of the Treasury to guarantee against any loss, and included leases as obligations for which guarantees against loss may be given.

Subsec. (c). Pub. L. 94–25, § 11(2), added "lease rate" after "interest rate", "leases" after "obligations", and "lease" after "obligation".

Subsec. (d). Pub. L. 94–25, § 11(3), substituted "obligations, leases, or loans' for "obligations, or loans".

Subsec. (g). Pub. L. 94–25, § 11(4), substituted "obligation, lease, or loan" for "obligation, or loan" wherever appearing therein.

Subsec. (i). Pub. L. 94–25, § 11(5), substituted "a lease or loan" for "a loan".

1974—Subsec. (d). Pub. L. 93–496, § 9(a), substituted "$900,000,000" for "$500,000,000".

Subsecs. (h), (i). Pub. L. 93–496, § 9(b), added subsecs. (h) and (i).

1973—Subsec. (a). Pub. L. 93–146, § 13(1), added provisions requiring the approval of the Secretary of the Treasury.

Subsec. (d). Pub. L. 93–146, § 13(2), raised to "$500,000,000" the allowable aggregate unpaid principal amount of securities, obligations, and loans outstanding at any one time which are guaranteed by the Secretary.

Subsec. (g). Pub. L. 93–146, § 13(3), added subsec. (g).

1972—Subsec. (a). Pub. L. 92–316 incorporated existing provisions of first and part of second sentences in provisions designated as subsec. (a), authorized refinancing guarantees, and substituted provision specifying guarantee of loans for "reservation systems, switch and signal systems, and other capital equipment and facilities necessary for the improvement of rail passenger service" for prior guarantee of loans "for other corporate purposes".

Subsecs. (b), (c). Pub. L. 92–316 added subsecs. (b) and (c).

Subsec. (d). Pub. L. 92–316 substituted first sentence limitation of aggregate unpaid principal amount of securities, obligations, or loans outstanding at any one time which are guaranteed by the Secretary to $150,000,000 before July 1, 1973, and to $200,000,000 after June 30, 1973,

for prior second sentence limitation of amount of guaranteed loans outstanding at any one time to $100,000,000 and deleted phrase "from the lending institution" following "prescribe and collect".

Subsec. (e). Pub. L. 92–316 incorporated existing fourth sentence provisions in provisions designated as subsec. (e), provided expressly for appropriation to the Secretary" and that amount be available until expended, substituted text respecting amount "necessary to discharge all his responsibilities under this section" for amount "necessary to carry out this section", and deleted $100,000,000 restriction on amount of authorization.

Subsec. (f). Pub. L. 92–316 added subsec. (f).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–316 effective June 22, 1972, see section 13 of Pub. L. 92–316, set out as a note under section 543 of this title.

PROVISIONS APPLICABLE TO GUARANTEE OF LOANS BEFORE JUNE 22, 1972

Section 10(b) of Pub. L. 92–316 provided that: "Section 602 (b), (c), (d), (e), and (f) of the Rail Passenger Service Act of 1970, as amended by subsection (a) of this section [subsecs. (b), (c), (d), (e), and (f) of this section] shall also apply to guarantees made by the Secretary prior to the enactment of this Act [June 22, 1972]. The amendment of section 602(a) [subsec. (a) of this section] shall not affect the legality of guarantees made by the Secretary prior to the enactment of this Act [June 22, 1972], but such guarantees shall continue in effect until discharged by payment of the loan guaranteed, together with interest, after such date [June 22, 1972]."

SUBCHAPTER VII.—EMERGENCY FINANCIAL ASSISTANCE

§ 621. Interim authority to provide emergency financial assistance for railroads operating passenger service; Secretary to make loans and guarantee lenders.

* * * * *

(c)(1) In any case in which there is a liquidation of the assets of any railroad which is the recipient of a loan made or guaranteed under this chapter, the United States shall have the first right to redeem that portion of such assets consisting of those rights-of-way, tracks, and other facilities designated by the Secretary to be necessary for the purpose of providing intercity rail passenger service, including services employing innovative technology, within the basic system. In the case of a railroad in reorganization (as defined in section 702(12) of this title) which has an agreement with the Corporation to provide intercity rail passenger service on May 26, 1975, the sale by such railroad of any right-of-way or track over which the Corporation is required to provide intercity rail passenger service on May 26, 1975 (as an experimental route designated by the Secretary before May 26, 1975) shall be deemed to be a liquidation of the assets of such railroad under the first sentence of this paragraph, and the Secretary shall acquire such right, title, and interest in such right-of-way or track, and restore it to such condition, as may be necessary to permit the Corporation to provide intercity rail passenger service over the designated route.

* * * * *

(As amended Pub. L. 94–25, § 12, May 26, 1975, 89 Stat. 93.)

AMENDMENTS

1975—Subsec. (c)(1). Pub. L. 94–25 added provision granting the Secretary the right, title, and interest in any right-of-way or track sold by a railroad in reorganization as defined in section 702(12) of this title, and over which the Corporation is required to provide intercity rail passenger service.

SUBCHAPTER VIII.—MISCELLANEOUS PROVISIONS

§ 641. Adequacy of service; regulations; maintenance of civil actions for enforcement of provisions.

(a) The Commission shall promulgate, within 60 days from November 3, 1973, and shall from time to time revise, such regulations as it considers necessary to provide adequate service, equipment, tracks, and other facilities for quality intercity rail passenger service. The Corporation may contract with railroads or with regional transportation agencies for the improvement of service, equipment, tracks and other facilities necessary to meet such regulations promulgated by the Commission. In the event of a failure to agree, the Commission shall by rule establish procedures for allocating between the Corporation and a railroad any costs required to be incurred to meet the regulations establishing adequate service, equipment, tracks, and other facilities.

(b) A civil action may be brought by the Commission to enforce any provision of subsection (a) of this section. The Department of Justice shall represent the Commission in all court proceedings pursuant to this subsection, except that in any case in which the Commission seeks to challenge action or inaction on the part of any party which the Department of Justice is representing, the Commission may be represented by its own attorneys. Unless the Attorney General notifies the Commission within 45 days of a request for representation that he will represent the Commission, such representation may be made by attorneys designated by the Commission. Any action to enforce the provisions of subsection (a) of this section may be maintained in the district court of the United States for any district in which a defendant is found, resides, transacts business, or maintains an agent for service of process. All process in any such suit may be served in any judicial district in which the person to be served is an inhabitant or in which he may be found. (As amended Pub. L. 93–146, § 14, Nov. 3, 1973, 87 Stat. 554; Pub. L. 93–496, § 10, Oct. 28, 1974, 88 Stat 1531.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–496 substituted provisions relating to civil actions to enforce the provisions of subsec. (a), for provisions relating to a civil penalty of $500 for violation of any regulation.

1973—Pub. L. 93–146 designated existing provisions covering the penalty for violation of regulations as subsec. (b), struck out existing provisions under which the Commission had been authorized to prescribe such regulations as it considered necessary to provide safe and adequate service, equipment, and facilities for intercity rail passenger service, and added subsec. (a).

§ 644. Records and audit of the Corporation and certain railroads.

* * * * *

(2)(A) The Comptroller General of the United States shall conduct annually a performance audit of the activities and transactions of the Corporation in accordance with generally accepted management

principles, and under such rules and regulations as may be prescribed by the Comptroller General. Any such audit shall be conducted at such place or places as the Comptroller General may deem appropriate. The representative of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Corporation pertaining to its financial and other transactions and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of the Corporation shall remain in possession and custody of the Corporation.

(B) To the extent the Comptroller General deems necessary in connection with audits as he may make of the financial transactions of the Corporation pursuant to paragraph (A) of this subsection, his representatives shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by any railroad with which the Corporation has entered into a contract for the performance of intercity rail passenger service, pertaining to such railroad's financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of such railroad shall remain in the possession and custody of the railroad.

(C) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform Congress of the financial operations and condition of the Corporation, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary, and to the Corporation at the time submitted to the Congress. (As amended Pub. L. 92–316, § 11, June 22, 1972, 86 Stat. 233; Pub. L. 93–496, § 11, Oct. 28, 1974, 88 Stat. 1531.)

AMENDMENTS

1974—Subsec. (2)(A). Pub. L. 93–496 substituted provisions authorizing the Comptroller General to annually conduct a performance audit, with access to books and records pertaining to financial and other transactions, at the place or places deemed appropriate by him, for provisions authorizing the Comptroller General to audit the financial transactions of the Corporation for any fiscal year at the place or places where the accounts are normally kept, with access to books and records, etc., pertaining only to financial transactions.

1972—Pub. L. 92–316, § 11(1), provided, in section heading, for the records and audit of certain railroads.

Subsec. (2)(B). Pub. L. 92–316, § 11(2), added par. (B). Former par (B) redesignated (C).

Subsec. (2)(C). Pub. L. 92–316, § 11(2), redesignated former par. (B) as (C).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–316 effective June 22, 1972 see section 13 of Pub. L. 92–316, set out as a note under section 543 of this title.

§ 645. Report by Secretary of Transportation.

(a) The Secretary shall, on or before March 15, 1973, transmit to the Congress a comprehensive report on the effectiveness of this chapter in achieving and promoting intercity rail passenger service and on the effectiveness of the Corporation in implementing the purposes of this chapter. Such report shall include an evaluation by the Secretary of the intercity rail passenger service operations assumed by the Corporation including, but not limited to, adequacy and effectiveness of services, on-time performance, reservations and ticketing, scheduling, equipment, fare structures, routes, and immediate and long-term financial needs.

(b) In addition to the general evaluation and assessment required under subsection (a) of this section, the report by the Secretary shall include—

(1) recommendations for the orderly assumption by the Corporation of the operation and control of all aspects of its intercity rail passenger service, including the performance by the Corporation of all full-time functions solely related to the intercity rail passenger service provided by it under this chapter;

(2) an assessment of whether the board of directors of the Corporation adequately and fairly represents the members of the public who utilize intercity rail passenger services and, if necessary, recommendations for appropriate changes in the composition of such board of directors;

(3) estimates of potential revenues for the Corporation from the transportation of mail and express on intercity passenger trains;

(4) a detailed analysis of the on-time performance of intercity rail passenger service operations assumed by the Corporation, together with such recommendations as the Secretary may deem advisable to eliminate delays in such intercity rail passenger service operations caused by freight train operations;

(5) recommendations with respect to the establishment of the optimum intercity rail passenger service system as soon as possible after July 1, 1973, taking into account economic feasibility, requirements as to public convenience and necessity, and the ability of the Corporation to provide adequate service over the total system, which optimum system shall include recommended routes and discontinuances; and

(6) recommendations with respect to the improvement of tracks and roadbeds on routes over which the Corporation operates intercity passenger trains.

(c) Such report shall contain such additional recommendations as the Secretary may deem advisable to assist the Corporation in carrying out the purposes of this chapter, including recommendations for legislative enactments or administrative actions which would enable the Corporation, after July 1, 1973, to discontinue more rapidly and efficiently those routes which do not meet the criteria recom-

mended by the Secretary for the establishment of the optimum intercity rail passenger service system.

(d) In carrying out the provisions of this section, the Secretary may use available services and facilities of other departments, agencies, and instrumentalities of the Federal Government with their consent and on a reimbursable basis.

(e) Departments, agencies, and instrumentalities of the Federal Government shall exercise their powers, duties, and functions in such manner as will assist in carrving out the provisions of this section. (Pub. L. 91–518, title VIII, § 806, as added Pub. L. 92–316, § 12, June 22, 1972, 86 Stat. 233.)

EFFECTIVE DATE

Section effective June 22, 1972, see section 13 of Pub. L. 92–316, set out as a note under section 543 of this title.

STUDY AND REPORT TO CONGRESS BY SECRETARY OF TRANSPORTATION ON INTEGRATION OF RAIL SERVICE WITH OTHER MODES OF TRANSPORTATION

Pub. L. 93–496, § 17, Oct. 28, 1974, 88 Stat. 1534, provided that: "The Secretary of Transportation shall conduct a study and report to the Congress within one year after the date of enactment of this section [Oct. 28, 1974] on the potential for integrating rail service provided by the National Railroad Passenger Corporation with other modes of transportation, including buses, with particular attention to the transportation needs of rural areas. Such study and report shall include an evaluation of the funding mechanisms to assist increased service by other modes of transportation, including buses, connected to rail service provided by the National Railroad Passanger Corporation where such assistance will provide the opportunity for increased utilization of such rail service, especially by persons residing in rural areas."

Chapter 16.—REGIONAL RAIL REORGANIZATION [NEW]

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SUBCHAPTER I.—GENERAL PROVISIONS

§ 701. Congressional declaration of policy.

(a) Findings.

The Congress finds and declares that—

(1) Essential rail service in the midwest and northeast region of the United States is provided by railroads which are today insolvent and attempting to undergo reorganization under the Bankruptcy Act.

(2) This essential rail service is threatened with cessation or significant curtailment because of the inability of the trustees of such railroads to formulate acceptable plans of reorganization. This rail service is operated over rail properties which were acquired for a public use, but which have been permitted to deteriorate and now require extensive rehabilitation and modernization.

(3) The public convenience and necessity require adequate and efficient rail service in this region and throughout the Nation to meet the needs of commerce, the national defense, the environment, and the service requirements of passengers, United States mail, shippers, States and their political subdivisions, and consumers.

(4) Continuation and improvement of essential rail service in this region is also necessary to preserve and maintain adequate national rail services and an efficient national rail transportation system.

(5) Rail service and rail transportation offer economic and environmental advantages with respect to land use, air pollution, noise levels, energy efficiency and conservation, resource allocation, safety, and cost per ton-mile of movement to such extent that the preservation and maintenance of adequate and efficient rail service is in the national interest.

(6) These needs cannot be met without substantial action by the Federal Government.

(b) Purposes.

It is therefore declared to be the purpose of Congress in this chapter to provide for—

(1) the identification of a rail service system in the midwest and northeast region which is adequate to meet the needs and service requirements of this region and of the national rail transportation system;

(2) the reorganization of railroads in this region into an economically viable system capable of providing adequate and efficient rail service to the region;

(3) the establishment of the United States Railway Association, with enumerated powers and responsibilities;

(4) the establishment of the Consolidated Rail Corporation, with enumerated powers and responsibilities;

(5) assistance to States and local and regional transportation authorities for continuation of local rail services threatened with cessation; and

(6) necessary Federal financial assistance at the lowest possible cost to the general taxpayer.

(Pub. L. 93–236, title I, § 101, Jan. 2, 1974, 87 Stat. 986.)

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsec. (a)(1), is classified to section 1 et seq. of Title 11, Bankruptcy.

SHORT TITLE OF 1975 AMENDMENT

Section 1 of Pub. L. 94–5, Feb. 28, 1975, 89 Stat. 7, provided: "That this Act [enacting section 794 of this title and amending sections 712, 715, 716, 717, 721, 723, 725, and 743 of this title] may be cited as the 'Regional Rail Reorganization Act Amendments of 1975'."

SHORT TITLE

Section 1 of Pub. L. 93–236 provided in part that Pub. L. 93–236 [which enacted this chapter and amended section 856 of Title 31, and section 1(16) of Title 49], may be cited as the "Regional Rail Reorganization Act of 1973."

SEPARABILITY OF PROVISIONS

Section 604 of Pub. L. 93–236 provided that: "If any provision of this Act [which enacted this chapter and amended section 856 of Title 31, and section 1(16) of Title 49,] or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby."

§ 702. Definitions.

As used in this chapter, unless the context otherwise requires—

(1) "Association" means the United States Railway Association, established under section 711 of this title;

(2) "Commission" means the Interstate Commerce Commission;

(3) "Corporation" means the Consolidated Rail Corporation required to be established under section 741 of this title;

(4) "effective date of the final system plan" means the date on which the final system plan or any revised final system plan is deemed approved by Congress, in accordance with section 718 of this title;

(5) "employee stock ownership plan" means a technique of corporate finance that uses a stock bonus trust or a company stock money purchase pension trust which qualifies under section 401(a) of Title 26 in connection with the financing of corporate improvements, transfers in the ownership of corporate assets, and other capital requirements of a corporation and which is designed to build beneficial equity ownership of shares in the employer corporation into its employees substantially in proportion to their relative incomes, without requiring any cash outlay, any reduction in pay or other employee benefits, or the surrender of any other rights on the part of such employees;

(6) "final system plan" means the plan of reorganization for the restructure, rehabilitation, and modernization of railroads in reorganization prepared pursuant to section 716 of this title and approved pursuant to section 718 of this title;

(7) "includes" and variants thereof should be read as if the phrase "but is not limited to" were also set forth;

(8) "Office" means the Rail Services Planning Office established under section 715 of this title;

(9) "profitable railroad" means a railroad which is not a railroad in reorganization. The term does not include the Corporation, the National Railroad Passenger Corporation, or a railroad leased, operated, or controlled by a railroad in reorganization in the region;

(10) "rail properties" means assets or rights owned, leased, or otherwise controlled by a railroad which are used or useful in rail transportation service; except that the term, when used in conjunction with the phase [1] "railroads leased, operated, or controlled by a railroad in reorganization", shall not include assets or rights owned, leased, or otherwise controlled by a Class I railroad which is not wholly owned, operated, or leased by a railroad in reorganization but is controlled by a railroad in reorganization;

(11) "railroad" means a common carrier by railroad as defined in section 1(3) of Title 49. The term includes the Corporation and the National Railroad Passenger Corporation;

(12) "railroad in reorganization" means a railroad which is subject to a bankruptcy proceeding and which has not been determined by a court to be reorganizable or not subject to reorganization pursuant to this chapter as prescribed in section 717(b) of this title. A "bankruptcy proceeding" includes a proceeding pursuant to section 205 of Title 11 and an equity receivership or equivalent proceeding;

(13) "Region" means the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan, and Illinois; the District of Columbia; and those portions of contiguous States in which are located rail properties owned or operated by railroads doing business primarily in the aforementioned jurisdictions (as determined by the Commission by order);

(14) "Secretary" means the Secretary of Transportation or his delegate, unless the context indicates otherwise; and

(15) "State" means any State or the District of Columbia.

(Pub. L. 93–236, title I, § 102, Jan. 2, 1974, 87 Stat. 986.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 621 of this title; title 19 section 2373.

SUBCHAPTER II.—UNITED STATES RAILWAY ASSOCIATION

§ 711. Formation and structure.

(a) Establishment.

There is established, in accordance with the provisions of this section, an incorporated nonprofit as-

[1] So in original. Probably should read "phrase".

sociation to be known as the United States Railway Association.

(b) Administration.

The Association shall be directed by a Board of Directors. The individuals designated, pursuant to subsection (d)(2) of this section, as the Government members of such Board shall be deemed the incorporators of the Association and shall take whatever steps are necessary to establish the Association, including filing of articles of incorporation, and serving as an acting Board of Directors for a period of not more than 45 days after the date of incorporation of the Association.

(c) Status.

The Association shall be a government corporation of the District of Columbia subject, to the extent not inconsistent with this subchapter, to the District of Columbia Nonprofit Corporation Act. (D.C. Code, sec. 29–1001 et seq.). Except as otherwise provided, employees of the Association shall not be deemed employees of the Federal Government. The Association shall have succession until dissolved by Act of Congress, shall maintain its principal office in the District of Columbia, and shall be deemed to be a resident of the District of Columbia with respect to venue in any legal proceeding.

(d) Board of Directors.

The Board of Directors of the Association shall consist of 11 individuals, as follows:

(1) the Chairman, a qualified individual who shall be appointed by the President, by and with the advice and consent of the Senate;

(2) three Government members, who shall be the Secretary, the Chairman of the Commission, and the Secretary of the Treasury, or their duly authorized representatives; and

(3) seven nongovernment members, who shall be appointed by the President, by and with the advice and consent of the Senate, on the following basis—

(A) one to be selected from a list of qualified individuals recommended by the Association of American Railroads or its successor who are representatives of profitable railroads;

(B) one to be selected from a list of qualified individuals recommended by the American Federation of Labor and Congress of Industrial Organizations or its successor who are representative of railroad labor;

(C) one to be selected from a list of qualified individuals recommended by the National Governors Conference;

(D) one to be selected from a list of qualified individuals recommended by the National League of Cities and Conference of Mayors;

(E) two to be selected from lists of qualified individuals recommended by shippers and organizations representative of significant shipping interests including small shippers;

(F) one to be selected from lists of qualified individuals recommended by financial institutions, the financial community, and recognized financial leaders.

As used in this paragraph, a list of qualified individuals shall consist of not less than three individuals.

Except for the members appointed under paragraphs (1) and (3) (A), (B), (E), and (F), no member of the Board may have any employment or other direct financial relationship with any railroad. A member of the Board who is not otherwise an employee of the Federal Government may receive $300 per diem when engaged in the actual performance of his duties plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(e) Terms of office.

The terms of office of the nongovernment members of the Board of Directors of the Association first taking office shall expire as designated by the President at the time of nomination—two at the end of the second year; two at the end of the fourth year; and three at the end of the sixth year. The term of office of the Chairman of such Board shall be 6 years. Successors to members of such Board shall be appointed in the same manner as the original members and, except in the case of government members, shall have terms of office expiring 6 years from the date of expiration of the terms for which their predecessors were appointed. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(f) Quorum.

Beginning 45 days after the date of incorporation of the Association, six members of the Board, including three of the nongovernment members, shall constitute a quorum for the transaction of any function of the Association.

(g) President.

The Board of Directors of the Association, upon the recommendation of the Secretary, shall appoint a qualified individual to serve as the President of the Association at the pleasure of the Board. The President of the Association, subject to the direction of the Board, shall manage and supervise the affairs of the Association.

(h) Executive Committee.

The Board of Directors of the Association shall have an executive committee which shall consist of the Chairman of the Board, the Secretary, the Chairman of the Commission, and two other members who shall be selected by the members of the Board.

(i) Miscellaneous.

(1) The Association shall have a seal which shall be judicially recognized.

(2) The Administrator of General Services shall furnish the Association with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(3) The Secretary is authorized to transfer to the Association or the Corporation rights in intellectual property which are directly related to the conduct of the functions of the Association or the Corporation, to the extent that the Federal Government has such rights and to the extent that transfer is necessary to carry out the purposes of this chapter.

(j) Use of names.

No person, except the Association, shall hereafter use the words "United States Railway Association" as a name for any business purpose. No person, except the corporation directed to be established under section 741 of this title, shall hereafter use the words "Consolidated Rail Corporation" as a name for any business purpose. Violations of these provisions may be enjoined by any court of general jurisdiction in an action commenced by the Association or the Corporation. In any such action, the Association or the Corporation may recover any actual damages flowing from such violation, and, in addition, shall be entitled to punitive damages (regardless of the existence or nonexistence of actual damage) in an amount not to exceed $100 for each day during which such violation was committed. The district courts of the United States shall have jurisdiction over actions brought under this subsection, without regard to the amount in controversy or the citizenship of the parties. (Pub. L. 93–236, title II, § 201, Jan. 2, 1974, 87 Stat. 988.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 702 of this title.

§ 712. General powers and duties of the Association.

(a) General.

To carry out the purposes of this chapter, the Association is authorized to—

(1) engage in the preparation and implementation of the final system plan;

(2) issue obligations under section 720 of this title and make loans under section 721 of this title;

(3) provide assistance to States and local or regional transportation authorities in accordance with section 763 of this title;

(4) sue and be sued, complain and defend, in the name of the Association and through its own attorneys; adopt, amend, and repeal bylaws governing the operation of the Association and such rules and regulations as are necessary to carry out the authority granted under this chapter; conduct its affairs, carry on operations, and maintain offices;

(5) appoint, fix the compensation, and assign the duties of such attorneys, agents, consultants, and other full- and part-time employees as it deems necessary or appropriate; except that (1) no officer of the Association, including the Chairman, may receive compensation at a rate in excess of that prescribed for level I of the Executive Schedule under section 5312 of Title 5, and (2) no individual may hold a position in violation of regulations which the Secretary shall establish to

(6) acquire and hold such real and personal property as it deems necessary or appropriate in the exercise of its responsibilities under this chapter, and to dispose of any such property held by it;

(7) consult with the Secretary of the Army and the Chief of Engineers and request the assistance of the Corps of Engineers, and the Secretary of the Army may direct the Corps of Engineers to coavoid conflicts of interest and to protect the interests of the public;

operate fully with the Association, the Corporation, or any entity designated in accordance with section 716(c)(1)(C) of this title in order to carry out the purposes of this chapter;

(8) consult on an ongoing basis with the Chairman of the Federal Trade Commission and the Attorney General to assess the possible anticompetitive effects of various proposals and to negotiate provisions which would, to the greatest extent practicable in accordance with the purposes of this chapter and the goal set forth in section 716(a)(5) of this title, alleviate any such anticompetitive effects;

(9) consult with representatives of science, industry, agriculture, labor, environmental protection and consumer organizations, and other groups, as it deems advisable; and

(10) enter into, without regard to section 5 of Title 41, such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its functions and duties with any person (including a government entity).

(b) Duties.

In addition to its duties and responsibilities under other provisions of this chapter, the Association shall—

(1) prepare a survey of existing rail services in the region, including patterns of traffic movement; traffic density over identified lines; pertinent costs and revenues of lines; and plant, equipment, and facilities (including yards and terminals);

(2) prepare an economic and operational study and analysis of present and future rail and express service needs in the region; the nature and volume of the traffic in the region now being moved by rail and express or likely to be moved by rail and express in the future; the extent to which available alternative modes of transportation could move such traffic as is now carried by railroads in reorganization; the relative economic, social, and environmental costs that would be involved in the use of such available alternative modes, including energy resource costs; and the competitive or other effects on profitable railroads;

(3) prepare a study of rail passenger services in the region, in terms of scope and quality;

(4) consider the views of the Office and of all government officials and persons who submit views, reports, or testimony under section 715(d)(1) of this title or in the course of proceedings conducted by the Office;

(5) consider methods of achieving economies in the cost of rail system operations in the region including consolidation, pooling, and joint use or operation of lines, facilities, and operating equipment; relocation; rehabilitation and modernization of equipment, track, and other facilities; and abandonment of lines consistent with meeting needs and service requirements; together with the anticipated economic, social, and environmental costs and benefits of each such method;

(6) consider the effects on railroad employees of any restructuring of rail services in the region;

(7) make available to the Secretary, the Director of the Office and appropriate committees of the

Congress all studies, data, and other information acquired or developed by the Association; and

(8) study the feasibility of coordinating rail and express service in the region.

(c) Investment of funds.

Uncommitted funds of the Association shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed thereby, or in obligations, participations, or other investments which are lawful investments for fiduciary, trust, or public funds.

(d) Exemption from taxation.

The Association, including its franchise, capital reserves, surplus, security holdings, and income shall be exempt from all taxation now or hereafter imposed by the United States, any commonwealth, territory, dependency, or possession thereof, or by any State or political subdivision thereof, except that any real property of the Association shall be subject to taxation to the same extent according to its value as other real property is taxed.

(e) Annual report.

The Association shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Association during the preceding fiscal year. Each such report shall include (1) the Association's statement of specific and detailed objectives for the activities and programs conducted and assisted under this chapter; (2) statements of the Association's conclusions as to the effectiveness of such activities and programs in meeting the stated objectives and the purposes of this chapter, measured through the end of the preceding fiscal year; (3) recommendations with respect to any legislation or administrative action which the Association deems necessary or desirable; (4) a statistical compilation of the obligations issued and loans made under this chapter; (5) a summary of outstanding problems confronting the Association, in order of priority; (6) all other information required to be submitted to the Congress pursuant to any other provision of this chapter; and (7) the Association's projections and plans for its activities and programs during the next fiscal year.

(f) Budget.

The receipts and disbursements of the Association (other than administrative expenses referred to in subsection (g) of this section) in the discharge of its functions shall not be included in the totals of the budget of the United States Government, and shall be exempt from any annual expenditure and net lending (budget outlays) limitations imposed on a budget of the United States Government. The Chairman of the Association shall transmit annually to the Congress a budget for program activities and for administrative expenses of the Association. The Chairman shall report annually to the Congress the amount of net lending of the Association, which would be included in the totals of the budgets of the United States Government, if the Association's activities were not excluded from those totals as a result of this section.

(g) Accountability.

The Chairman of the Association shall transmit annually to the Office of Management and Budget a budget for administrative expenses of the Association. Whenever the Association submits any budget estimate or request to the Office of Management and Budget, it shall concurrently transmit a copy of the estimate or request to the Congress. Within budgetary constraints of the Congress, the maximum feasible and prudent budgetary flexibility shall be provided to the Association to permit effective operations (Pub. L. 93–236, title II, § 202, Jan. 2, 1974, 87 Stat. 990, amended Pub. L. 94–5, § 2(a), Feb. 28, 1975, 89 Stat. 7.)

CODIFICATION

Subsec. (g) of this section consisted, in the original, of pars. (1) and (2). Par. (1), which amended section 856 of Title 31, Money and Finance, and the designation "(2)" preceding par. (2), have been omitted for purposes of codification.

AMENDMENTS

1975—Subsec. (b)(2). Pub. L. 94–5, § 2(a)(1), inserted "and express" following "rail" wherever appearing.

Subsec. (b)(7). Pub. L. 94–5, § 2(a)(2), substituted "; and" for a period at the end of subsec. (b)(7).

Subsec. (b)(8). Pub. L. 94–5, § 2(a)(3), added subsec. (b)(8).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 716 of this title.

§ 713. Access to information.

(a) Planning.

Each railroad operating in the region shall provide such relevant information as may be requested by the Secretary, the Office, or the Association in connection with the performance of their respective functions under any provision of this chapter. No information may be requested under this subsection after the effective date of the final system plan.

(b) Other.

Each railroad or other person or government entity seeking financial assistance from the Association shall maintain and make available such records, make and submit such reports, and provide such data, materials, or other relevant information as may be requested by the Association.

(c) Enforcement.

Where authorized under subsection (a) or (b) of this section and upon presenting appropriate credentials and a written notice of inspection authority, any officer or employee duly designated by the Secretary, the Office, or the Association may, at reasonable times, inspect records, papers, processes, rolling stock, systems, equipment, or facilities and may, in furtherance of their respective functions under this chapter, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or other order the attendance and testimony of such witnesses and the production of such information as is deemed advisable. Subpoenas shall be issued under the signature of the Secretary, the Director of the Office, or the Chairman or President of the Association and may be served by any duly designated individual. In case of contumacy or refusal to obey such a subpoena or order by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such district court shall, upon petition, have

jurisdiction to issue to such person an order requiring him to comply forthwith. Failure to obey such an order is punishable by such court as a contempt of court.

(d) Congress.

Nothing in this section shall authorize the withholding of information from any duly authorized committee of the Congress. (Pub. L. 93–236, title II, § 203, Jan 2, 1974, 87 Stat. 992.)

§ 714. Report.

(a) Preparation.

Within 30 days after January 2, 1974, the Secretary shall prepare a comprehensive report containing his conclusions and recommendations with respect to the geographic zones within the region in and between which rail service should be provided and the criteria upon which such conclusions and recommendations are based. The Secretary may use as a basis for the identification of such geographic zones the standard metropolitan statistical areas, groups of such areas, counties, or groups of counties having similar economic characteristics such as mining, manufacturing, or farming.

(b) Submission.

The Secretary shall submit the report required by subsection (a) of this section to the Office, the Association, the Governor and public utilities commission of each State studied in the report, local governments, consumer organizations, environmental groups, the public, and the Congress. The Secretary shall further cause a copy of the report to be published in the Federal Register. (Pub. L. 93–236, title II, § 204, Jan. 2, 1974, 87 Stat. 993.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to sections 715, 716 of this title.

§ 715. Rail Services Planning Office.

(a) Establishment.

There is established, on January 2, 1974, a new Office in the Commission to be known as the Rail Services Planning Office. The Office shall function continuously pursuant to the provisions of this chapter, and shall cease to exist 5 years after January 2, 1974. The Office shall be administered by a director.

(b) Director.

The Director of the Office shall be appointed by the Chairman of the Commission with the concurrence of 5 members of the Commission. The Director of the Office shall administer and be responsible for the discharge of the functions and duties of the Office from the date he takes office unless removed for cause by the Commission. He shall be compensated at a rate to be set by the Chairman of the Commission without regard to the provisions of Title 5 governing appointments in the competitive service, classification, and General Schedule pay rates, but at a rate not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title.

(c) Powers.

The Director of the Office is subject to the direction of, and shall report to, such member of the Commission as the Chairman thereof may designate. The Chairman may designate himself as that member. Such Director is authorized, with the concurrence of such member or (in case of disagreement) the Chairman of the Commission, to—

(1) appoint, fix the compensation, and assign the duties of employees of the Office without regard to the provisions of Title 5 governing appointments in the competitive service, and to procure temporary and intermittent services to the same extent as is authorized under section 3109 of Title 5, but at rates not to exceed $250 a day for qualified experts. Each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized and shall give careful consideration to a request to furnish to the Director of the Office, upon written request, on a reimbursable basis or otherwise, such assistance as the Director deems necessary to carry out the functions and duties of the Office. Such assistance includes transfer of personnel with their consent and without prejudice to their position and rating; and

(2) enter into, without regard to section 5 of Title 41, such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions and duties of the Office, with any person (including a government entity).

(d) Duties.

In addition to its duties, and responsibilities under other provisions of this chapter, the Office shall—

(1) study and evaluate the Secretary's report on rail services in the region required under section 714(a) of this title and submit its report thereon to the Association within 120 days after January 2, 1974. The Office shall also solicit, study, and evaluate the views with respect to present and future rail service needs of the region from Governors of States within the region; mayors and chief executives of political subdivisions within such States; shippers; the Secretary of Defense; manufacturers, wholesalers, and retailers within the region; consumers of goods and products shipped by rail; and all other interested persons. The Office shall conduct public hearings to solicit comments on such report and to receive such views;

(2) employ and utilize the services of attorneys and such other personnel as may be required in order to properly protect the interests of those communities and users of rail service which, for whatever reason, such as their size or location, might not otherwise be adequately represented in the course of the reorganization process as provided by this chapter;

(3) within 180 days after January 2, 1974, determine and publish standards for determining the "revenue attributable to the rail properties", the "avoidable costs of providing service", and "a reasonable return on the value", as those phrases are used in section 744 of this title, after a proceeding in accordance with the provisions of section 553 of Title 5; and

(4) assist States and local and regional transportation agencies in making determinations whether to provide rail service continuation sub-

sidies to maintain in operation particular rail properties by establishing criteria for determining whether particular rail properties are suitable for rail service continuation subsidies. Such criteria should include the following considerations: Rail properties are suitable if the cost of the required subsidy for such properties per year to the taxpayers is less than the cost of termination of rail service over such properties measured by increased fuel consumption and operational costs for alternative modes of transportation; the cost to the gross national product in terms of reduced output of goods and services; the cost of relocating or assisting through unemployment, retraining, and welfare benefits to individuals and firms adversely affected thereby; and the cost to the environment measured by damage caused by increased pollution. (Pub. L. 93–236, title II, § 205, Jan. 2, 1974, 87 Stat. 993, amended Pub. L. 94–5, § 3, Feb. 28, 1975, 89 Stat. 7.)

AMENDMENTS

1975—Subsec. (d)(2). Pub. L. 94–5 substituted "such other personnel as may be required in order to properly protect" for "such other personnel as may be required in order properly to protect" and "course of the reorganization process as provided by this chapter" for "course of the hearings and evaluations which the Office is required to conduct and perform under other provisions of this chapter".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 712, 717, 762 of this title.

§ 716. Final system plan.

(a) Goals.

The final system plan shall be formulated in such a way as to effectuate the following goals:

(1) the creation, through a process of reorganization, of a financially self-sustaining rail and express service system in the region;

(2) the establishment and maintenance of a rail service system adequate to meet the rail transportation needs and service requirements of the region;

(3) the establishment of improved high-speed rail passenger service, consonant with the recommendations of the Secretary in his report of September 1971, entitled "Recommendations for Northeast Corridor Transportation";

(4) the preservation, to the extent consistent with other goals, of existing patterns of service by railroads (including short-line and terminal railroads), and of existing railroad trackage in areas in which fossil fuel natural resources are located, and the utilization of those modes of transportation in the region which require the smallest amount of scarce energy resources and which can most efficiently transport energy resources;

(5) the retention and promotion of competition in the provision of rail and other transportation services in the region;

(6) the attainment and maintenance of any environmental standards, particularly the applicable national ambient air quality standards and plans established under the Clean Air Act Amendments of 1970, taking into consideration the environmental impact of alternative choices of action;

(7) the movement of passengers and freight in rail transportation in the region in the most efficient manner consistent with safe operation, including the requirements of commuter and intercity rail passenger service; the extent to which there should be coordination with the National Railroad Passenger Corporation and similar entities; and the identification of all short-to-medium distance corridors in densely populated areas in which the major upgrading of rail lines for high-speed passenger operation would return substantial public benefits; and

(8) the minimization of job losses and associated increases in unemployment and community benefit costs in areas in the region presently served by rail service.

(b) Factors.

The final system plan shall be based upon due consideration of all factors relevant to the realization of the goals set forth in subsection (a) of this section. Such factors include the need for and the cost of rehabilitation and modernization of track, equipment, and other facilities; methods of achieving economies in the cost of rail operations in the region; means of achieving rationalization of rail services and the rail service system in the region; marketing studies; the impact on railroad employees; consumer needs; traffic analyses; financial studies; and any other factors identified by the Association under section 712(b) of this title or in the report of the Secretary required under section 714(a) of this title.

(c) Designations.

The final system plan shall designate—

(1) which rail properties of railroads in reorganization in the region or of railroads leased, operated, or controlled by any railroad in reorganization in the region—

(A) shall be transferred to the Corporation;

(B) shall be offered for sale to a profitable railroad operating in the region and, if such offer is accepted, operated by such railroad; the plan shall designate what additions shall be made to the designation under subparagraph (A) of this paragraph in the event such profitable railroad fails to accept such offer;

(C) shall be purchased, leased, or otherwise acquired from the Corporation by the National Railroad Passenger Corporation in accordance with the exercise of its option under section 791(d) of this title for improvement to achieve the goal set forth in subsection (a)(3) of this section;

(D) may be purchased or leased from the Corporation by a State or a local or regional transportation authority to meet the needs of commuter and intercity rail passenger service; and

(E) if not otherwise required to be operated by the Corporation, a government entity, or a responsible person, are suitable for use for other public purposes, including highways, other forms of transportation, conservation, energy transmission, education or health care facilities, or recreation. In carrying out this subparagraph, the Association shall solicit the views and recommendations of the Secretary, the Secretary of

the Interior, the Administrator of the Environmental Protection Agency, and other agencies of the Federal Government and of the States and political subdivisions thereof within the region, and the general public; and

(2) which rail properties of profitable railroads operating in the region may be offered for sale to the Corporation or to other profitable railroads operating in the region subject to paragraphs (3) and (4) of subsection (d) of this section.

(d) Transfers.

All transfers or conveyances pursuant to the final system plan shall be made in accordance with, and subject to, the following principles:

(1) All rail properties to be transferred to the Corporation by a profitable railroad, by trustees of a railroad in reorganization, or by any railroad leased, operated, or controlled by a railroad in reorganization in the region, shall be transferred in exchange for stock and other securities of the Corporation (including obligations of the Association) and the other benefits accruing to such railroad by reason of such transfer.

(2) All rail properties to be conveyed to a profitable railroad operating in the region by trustees of a railroad in reorganization, or by any railroad leased, operated, or controlled by a railroad in reorganization in the region, shall be conveyed in exchange for compensation from the profitable railroad.

(3) Notwithstanding any other provision of this chapter, no acquisition under this chapter shall be made by any profitable railroad operating in the region without a determination with respect to each such transaction and all such transactions cumulatively (A) by the Association, upon adoption and release of the preliminary system plan, that such acquisition or acquisitions will not materially impair the profitability of any other profitable railroad operating in the region or of the Corporation, and (B) by the Commission, which shall be made within 90 days after adoption and release by the Association of the preliminary system plan, that such acquisition or acquisitions will be in full accord and comply with the provisions and standards of section 5 of Title 49. The determination by the Association shall not be reviewable in any court. The determination by the Commission shall not be reviewable in any court.

(4) Where the final system plan designates specified rail properties of a railroad in reorganization in the region, or of a railroad leased, operated, or controlled by a railroad in reorganization in the region, to be offered for sale to and operated by a profitable railroad operating in the region, such designation shall terminate 30 days after the effective date of the final system plan unless, prior to such date, such profitable railroad has notified the Association in writing of its acceptance of such offer. Where the final system plan designates specified rail properties of a profitable railroad operating in the region as authorized to be offered for sale or lease to the Corporation or to other profitable railroads operating in the region, such designation and authorization shall terminate 60 days after the effective date of the final system plan unless, prior to such date, a binding agreement with respect to such properties has been entered into and concluded.

(5) All properties sold by the Corporation pursuant to subsection (c)(1)(C) of this section and section 791(d) of this title shall be transferred at a value related to the value received for the transfer to the Corporation of such properities.

(e) Corporation features.

The final system plan shall set forth—

(1) pro forma earnings for the Corporation, as reasonably projected and considering the additions or changes in the designation of rail properties to be operated by the Corporation which may be made under subsection (d)(4) of this section;

(2) the capital structure of the Corporation, based on the pro forma earnings of the Corporation as set forth, including such debt capitalization as shall be reasonably deemed to conform to the requirements of the public interest with respect to railroad debt securities, including the adequacy of coverage of fixed charges; and

(3) the manner in which employee stock ownership plans may, to the extent practicable, be utilized for meeting the capitalization requirements of the Corporation, taking into account (A) the relative cost savings compared to conventional methods of corporate finance; (B) the labor cost savings; (C) the potential for minimizing strikes and producing more harmonious relations between labor organizations and railway management; (D) the projected employee dividend incomes; (E) the impact on quality of service and prices to railway users; and (F) the promotion of the objectives of this chapter of creating a financially self-sustaining railway system in the region which also meets the service needs of the region and the Nation.

(f) Value.

The final system plan shall designate the value of all rail properties to be transferred under the final system plan and the value of the securities and other benefits to be received for transferring those rail properties to the Corporation in accordance with the final system plan.

(g) Other provisions.

The final system plan may recommend arrangements among various railroads for joint use or operation of rail properties on a shared ownership, cooperative, pooled, or condominium-type basis, subject to such terms and conditions as may be specified in the final system plan. The final system plan shall also make such designations as are determined to be necessary in accordance with the provisions of section 762 or 763 of this title.

(h) Obligational authority.

The final system plan shall recommend the amount of obligations of the Association which are necessary to enable it to implement the final system plan.

(i) Terms and conditions for securities.

The final system plan may include terms and conditions for any securities to be issued by the Corporation in exchange for the conveyance of rail properties under the final system plan which in the judgement of the Association will minimize any actual or potential debt burden on the Corporation.

Any such terms and conditions for securities of the Corporation which purport to directly obligate the Association shall not become effective without affirmative approval, with or without modification by a joint resolution of the Congress. (Pub. L. 93–236, title II, § 206, Jan. 2, 1974, 87 Stat. 994, amended Pub. L. 94–5, § 2(b), Feb. 28, 1975, 89 Stat. 7.)

REFERENCES IN TEXT

Clean Air Act Amendments of 1970, referred to in subsec. (a)(6), refer to amendments made by Pub. L. 91–604. See short title note under section 1857b of Title 42, The Public Health and Welfare.

AMENDMENTS

1975—Subsec. (a)(1). Pub. L. 94–5 inserted "and express" following "rail".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 545, 702, 712, 717, 720, 725, 791 of this title.

§ 717. Adoption of final system plan.

(a) Preliminary system plan.

(1) Within 420 days after January 2, 1974, the Association shall adopt and release a preliminary system plan prepared by it on the basis of reports and other information submitted to it by the Secretary, the Office, and interested persons in accordance with this chapter and on the basis of its own investigations, consultations, research, evaluation, and analysis pursuant to this chapter. Copies of the preliminary system plan shall be transmitted by the Association to the Secretary, the Office, the Governor and public utility commission of each State in the region, the Congress, each court having jurisdiction over a railroad in reorganization in the region, the special court, and interested persons, and a copy shall be published in the Federal Register. The Association shall invite and afford interested persons an opportunity to submit comments on the preliminary system plan to the Association within 60 days after the date of its release.

(2) The Office is authorized and directed to hold public hearings on the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the preliminary system plan, not later than 60 days after the date of release of such plan. The Office is authorized to hold public hearings on any supplement to the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of such supplement, not later than 30 days after the release of such supplement.

(b) Approval.

(1) Within 120 days after January 2, 1974, each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether the railroad is reorganizable on an income basis within a reasonable time under section 205 of Title 11 and that the public interest would be better served by continuing the present reorganization proceedings than by a reorganization under this chapter. Within 60 days after the submission of the report by the Office, under section 715(d)(1) of this title, on the Secretary's report on rail services in the region, each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether or not such railroad shall be reorganized by means of transferring some of its rail properties to the Corporation pursuant to the provisions of this chapter. Because of the strong public interest in the continuance of rail transportation in the region pursuant to a system plan devised under the provisions of this chapter, each such court shall order that the reorganization be proceeded with pursuant to this chapter unless it (1) has found that the railroad is reorganizable on an income basis within a reasonable time under section 205 of Title 11 and that the public interest would be better served by such a reorganization than by a reorganization under this chapter, or (2) finds that this chapter does not provide a process which would be fair and equitable to the estate of the railroad in reorganization in which case it shall dismiss the reorganization proceeding. If a court does not enter an order or make a finding as required by this subsection, the reorganization shall be proceeded with pursuant to this chapter. An appeal from an order made under this section may be made only to the special court. Appeal to the special court shall be taken within 10 days following entry of an order pursuant to this subsection, and the special court shall complete its review and render its decision within 80 days after such appeal is taken. There shall be no review of the decision of the special court.

(2) Whenever it has been finally determined pursuant to the procedures of paragraph (1) of this subsection, that the reorganization of a railroad subject to reorganization under section 205 of Title 11 shall not be proceeded with pursuant to this chapter, the court having jurisdiction over such railroad may, upon a petition which is filed within 10 days after February 28, 1975, by the trustees of such railroad, reconsider such order. Such reorganization court shall (i) affirm its previous order or (ii) issue an order that the reorganization of such railroad be proceeded with pursuant to this chapter unless it finds that this chapter does not provide a process which would be fair and equitable. The provisions of paragraph (1) of this subsection are applicable in such reconsideration, except that (A) such reorganization court shall make its decision within 30 days after such petition is filed, and (B) any decision by the special court on appeal from such a decision shall be rendered within 30 days after such reorganization court decision is made. There shall be no review of the decision of the special court. The Association shall take any steps it finds necessary, consistent with time limitations and other provisions of this chapter, to effectuate the consequences of such a revised order, including the preparation and submission of any necessary or appropriate supplements to the preliminary system plan.

(c) Adoption.

Within 540 days after January 2, 1974, the executive committee of the Association shall prepare and submit a final system plan for the approval of the Board of Directors of the Association. A copy of such submission shall be simultaneously presented to the Commission. The submission shall reflect evaluation of all responses and summaries of responses received, testimony at any public hearings, and the

results of additional study and review. Within 30 days thereafter, the Board of Directors of the Association shall by a majority vote of all its members approve a final system plan which meets all of the requirements of section 716 of this title.

(d) Review of Commission.

Within 30 days following the adoption of the final system plan by the Association under subsection (c) of this section and the submission of such plan to Congress under section 718(a) of this title, the Commission shall submit to the Congress an evaluation of the final system plan delivered to both Houses of Congress. (Pub. L. 93–236, title II, § 207, Jan. 2, 1974, 87 Stat. 998, amended Pub. L. 93–488, § 1(a), (b), Oct. 26, 1974, 88 Stat. 1464; Pub. L. 94–5, § 4, Feb. 28, 1975, 89 Stat. 7.)

AMENDMENTS

1975—Subsec. (a)(2). Pub. L. 94–5, § 4(b), added provisions authorizing the Office to hold public hearings on supplements to the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the supplement not later than 30 days after the release of the supplement.

Subsec. (b). Pub. L. 94–5, § 4(a), designated existing provisions as par. (1) and added par. (2).

1974—Subsec. (a)(1). Pub. L. 93–488, § 1(a), substituted "420" for "300".

Subsec. (c). Pub. L. 93–488, § 1(b), substituted "540" for "420".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 721, 774 of this title.

§ 718. Review by Congress.

(a) General.

The Board of Directors of the Association shall deliver the final system plan adopted by the Association to both Houses of Congress and to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Commerce of the Senate. The final system plan shall be deemed approved at the end of the first period of 60 calendar days of continuous session of Congress after such date of transmittal unless either the House of Representatives or the Senate passes a resolution during such period stating that it does not favor the final system plan.

(b) Revised plan.

If either the House or the Senate passes a resolution of disapproval under subsection (a) of this section, the Association, with the cooperation and assistance of the Secretary and the Office, shall prepare, determine, and adopt a revised final system plan. Each such revised plan shall be submitted to Congress for review pursuant to subsection (a) of this section.

(c) Computation.

For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(Pub. L. 93–236, title II, § 208, Jan. 2, 1974, 87 Stat. 999.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 717, 719 of this title.

§ 719. Judicial review.

(a) General.

Notwithstanding any other provision of law, the final system plan which is adopted by the Association and which becomes effective after review by the Congress is not subject to review by any court except in accordance with this section. After the final system plan becomes effective under section 718 of this title, it may be reviewed with respect to matters concerning the value of the rail properties to be conveyed under the plan and the value of the consideration to be received for such properties.

(b) Special court.

Within 30 days after January 2, 1974, the Association shall make application to the judicial panel on multi-district litigation authorized by section 1407 of Title 28 for the consolidation in a single, three-judge district court of the United States of all judicial proceedings with respect to the final system plan. Within 30 days after such application is received, the panel shall make the consolidation in a district court (cited herein as the "special court") which the panel determines to be convenient to the parties and the one most likely to be able to conduct any proceedings under this section with the least delay and the greatest possible fairness and ability. Such proceedings shall be conducted by the special court which shall be composed of three Federal judges who shall be selected by the panel, except that none of the judges selected may be a judge assigned to a proceeding involving any railroad in reorganization in the region under section 205 of Title 11. The special court is authorized to exercise the powers of a district judge in any judicial district with respect to such proceedings and such powers shall include those of a reorganization court. The special court shall have the power to order the conveyance of rail properties of railroads leased, operated, or controlled by a railroad in reorganization in the region. The panel may issue rules for the conduct of its functions under this subsection. No determination by the panel under this subsection may be reviewed in any court.

(c) Delivery of plan to special court.

Within 90 days after its effective date, the Association shall deliver a certified copy of the final system plan to the special court and shall certify to the special court—

(1) which rail properties of the respective railroads in reorganization in the region and of any railroad leased, operated, or controlled by such railroads in reorganization are to be transferred to the Corporation, in accordance with the final system plan;

(2) which rail properties of the respective railroads in reorganization in the region or railroads leased, operated, or controlled by such railroads in reorganization are to be conveyed to profitable railroads, in accordance with the final system plan;

(3) the amount, terms, and value of the securities of the Corporation (including any obligations of the Association) to be exchanged for those rail

properties to be transferred to the Corporation pursuant to the final system plan, and as indicated in paragraph (1) of this subsection; and

(4) that the transfer of rail properties in exchange for securities of the Corporation (including any obligations of the Association) and other benefits is fair and equitable and in the public interest.

(d) Bankruptcy courts.

Within 90 days after its effective date, the Association shall deliver a certified copy of the final system plan to each district court of the United States or any other court having jurisdiction over a railroad in reorganization in the region and shall certify to each such court—

(1) which rail properties of that railroad in reorganization are to be transferred to the Corporation under the final system plan; and

(2) which rail properties of that railroad in reorganization, if any, are to be conveyed to profitable railroads operating in the region, under the final system plan.

(Pub. L. 93–236, title II, § 209, Jan. 2, 1974, 87 Stat. 999.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 743 of this title.

RULES OF THE SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973

Effective April 26, 1974

As amended to January 18, 1976

RULE 1. NAME

The name of the court is "Special Court, Regional Rail Reorganization Act of 1973".

RULE 2. SEAL

The seal of the court shall be that of the United States District Court for the District of Columbia.

RULE 3. SITUS, CLERK AND COMMUNICATIONS

A. The situs of the Special Court shall be at the United States Courthouse, Washington, D.C. 20001.

B. The Clerk of the District Court for the District of Columbia shall be the Clerk of the Special Court. The Clerk shall supply such number of deputy clerks and other personnel as the business of the Special Court may require. All rules of said District Court wth respect to the Clerk shall apply to his functions as Clerk of the Special Court.

C. All communications to the Special Court, save those hereafter directed to be sent directly to the judges, shall be made to the Clerk, who shall transmit them in accordance with directions of the court or a judge thereof.

D. At the discretion of the judges of the Special Court, hearings, oral arguments and any other proceedings may be held in any federal courthouse or other federal building within the region as defined in § 102(13) of the Act.

RULE 4. ACTION BY SINGLE JUDGE—QUORUM

A. Any one of the judges of the court shall have the powers, including the power to make decisions under § 209(e)(1)(E), specified in the case of three-judge courts by the first paragraph of 28 U.S.C. § 2284(5) and, in cases under § 209(f), also the powers exercised by a single judge in accordance with established procedures in the courts of appeals. The court may also authorize a single judge to preside over the taking of testimony.

B. Subject to paragraph A of this rule, two judges shall constitute a quorum except that, save when a judge is unavailable due to illness or when there is a vacancy on the court, all three judges shall participate in any final decisions under §§ 303(b) and 209(e)(1) (A), (B), (C), (D) and (F) of the Act.

RULE 5. ATTORNEYS

Every member in good standing of the bar of any district court or court of appeals of the United States or of the bar of the Supreme Court of the United States is entitled to practice before the Special Court. Any other attorney desiring so to practice must obtain admission to practice before the District Court for the District of Columbia.

RULES 6 TO 9. [REPEALED. JANUARY 6, 1976]

RULE 10. FORM, FILING, AND NUMBER OF COPIES OF BRIEFS AND OTHER PAPERS

A. The form of briefs and other papers shall be as provided by FRAP 32, except as otherwise provided in these rules or by order of the Special Court or a judge thereof.

B. Two copies of each brief shall be transmitted directly to each of the judges, ten copies shall be filed with the Clerk, and two copies shall be served on counsel for each party separately represented.

RULE 11. APPENDIX TO THE BRIEF AND EXHIBITS

A. In light of the time requirements for appeals under § 207(b), the Special Court will not require adherence to FRAP 30. However, the Special Court would welcome the filing of appendices which include portions of the record to which it is desired that the court give particular attention.

B. Unless included in an appendix, four copies of any exhibit on which a party desires to rely shall be filed prior to or presented at the argument. The other requirements of FRAP 30(e) with respect to exhibits are waived in appeals under § 207(b).

RULE 12. OPINIONS AND RULINGS OF THE COURT

Opinions and rulings of the Special Court, unless delivered orally, shall be filed in the office of the Clerk who shall promptly reproduce them and distribute one copy to each party.

RULES 13 TO 15. [REPEALED. JANUARY 6, 1976]

RULE 16. AMENDMENT, SUPPLEMENT AND REPEAL

These rules may be amended, supplemented, or repealed in whole or in part, at any time or from time to time as the interests of justice may require.

NOTICE TO SHOW CAUSE WHY APPEAL SHOULD NOT BE DISMISSED FOR WANT OF JURISDICTION

Special Court Docket No. ------

District Court No. ------

An appeal having been taken by -------- to the Special Court, Regional Rail Reorganization Act of 1973, from a decision of the District Court for the -------- District of --------, in the Matter of --------, debtor under § 77 of the Bankruptcy Act, dated --------, 1974, and the Special Court

being doubtful whether the said decision is appealable, the appellant[s] is [are] directed to show cause before said court on May ____, 1974, in Room ______, of the ________, Washington, D.C., at 10 A.M., or as soon thereafter as counsel can be heard, why said appeal should not be dismissed for want of jurisdiction.

In view of the extremely limited nature of the issue, the court will receive only one brief, not to exceed 25 printed or 40 typewritten pages, from all parties supporting the appealability of any single decision and one brief, of the same size, from all parties challenging the appealability of such decision. Such briefs shall be filed and served at least 2 days before the date of the hearing. The court will allow a total of 30 minutes for argument by not more than two counsel in support of appealability and a total of 30 minutes for argument by not more than two counsel against appealability with respect to each decision. If appeals should be taken in several such cases, counsel are invited to present a plan to the court that will avoid the need for separate briefing and argument of the identical jurisdictional issue; in that event the court will be prepared to consider enlarging the space and time limits above provided.

RULE 17. PROCEEDINGS UNDER SECTIONS 209 AND 303

A. Proceedings under §§ 209 and 303 of the Act, other than proceedings under § 209(f), shall conform to the Federal Rules of Civil Procedure insofar as these may be applicable and are not inconsistent with the Act or the rules or orders of this court, except that (1) the court by rule, order or notice may shorten any period of time provided in said rules, (2) save as the court may otherwise provide, motions shall be made only by order to show cause submitted to the presiding judge or, in the event of his unavailability, to one of the other judges of the court, and (3) in addition to the filing required by F.R.Civ.P. 5 (d) and (e), two copies of any paper required to be so filed shall be sent directly to each of the judges of the court.

B. The complaint in action pursuant to § 209(e) brought before the date of conveyance directed in § 303(b)(1) wherein the complainant seeks a hearing or determination prior to such date shall contain a detailed statement of the reasons why the complainant considers that the court may hear or determine the cause despite the penultimate sentence of § 209(e)(1), and the respondent shall answer such statement within ten days after filing.

RULE 18. PROCEEDINGS UNDER SECTION 209(f)

Proceedings under § 209(f) shall be conducted in accordance with Rules 15, 16, 17, 18 and 20 of the Federal Rules of Appellate Procedure insofar as these may be applicable and are not inconsistent with the Act or the rules of this court, except that:

(1) The petition shall be served upon the Corporation prior to its filing with the Special Court, and notice of the petition shall be published in the Federal Register within seven days after filing.

(2) Any answer by the Corporation shall be served on the petitioner and filed with the court within seven days after the filing of the petition.

(3) Except for good cause shown, any application for leave to intervene shall be served and filed within seven days after publication of the petition in the Federal Register.

(4) The record made before the Association and the Commission shall be filed within seven days after the filing of the petition.

(5) Any application for leave to adduce additional evidence shall be made within fourteen days after the filing of the petition and, except for good cause shown, any such application by an intervenor shall be made within seven days after the grant of intervention or the filing of the record, whichever shall last occur. Such an application will be granted only if the applicant shows to the satisfaction of the court that such additional evidence is material, that there were reasonable grounds for failure to adduce it in earlier proceedings, and that granting the application will not prevent the court from deciding the petition within the time provided by the Act.

RULE 19. REFERENCES TO REGIONAL RAIL REORGANIZATION ACT

In all papers filed with the court references to sections of the Regional Rail Reorganization Act shall be to such sections as numbered in the Act and not to such sections as numbered in the U.S. Code.

RULE 20. SERVICE

All persons claiming an interest in proceedings under the Act are directed to file and maintain with the Clerk a specification of the name, address and telephone number of an attorney upon whom service may be made. Service need be made only on parties having an interest in the particular action or motion. Every pleading and motion shall contain a certificate specifying the names and addresses of the attorneys on whom service has been made and of the person whom each such attorney represents.

§ 720. Obligations of the Association.

(a) General.

To carry out the purposes of this chapter, the Association is authorized to issue bonds, debentures, trust certificates, securities, or other obligations (herein cited as "obligations") in accordance with this section. Such obligations shall have such maturities and bear such rate or rates of interest as are determined by the Association with the approval of the Secretary of the Treasury. Such obligations shall be redeemable at the option of the Association prior to maturity in the manner stipulated in each such obligation, and may be purchased by the Association in the open market at a price which is reasonable.

(b) Maximum obligational authority.

Except as otherwise provided in the last sentence of this subsection, the aggregate amount of obligations of the Association issued under this section which may be outstanding at any one time shall not exceed $1,500,000,000 of which the aggregate amount issued to the Corporation shall not exceed $1,000,000,000. Of the aggregate amount of obligations issued to the Corporation by the Association, not less than $500,000,000 shall be available solely for

the rehabilitation and modernization of rail properties acquired by the Corporation under this chapter and not disposed of by the Corporation pursuant to section 716(c)(1)(C) of this title. Any modification to the limitations set forth in this subsection shall be made by joint resolution adopted by the Congress.

(c) Guarantees.

The Secretary shall guarantee the payment of principal and interest on all obligations issued by the Association in accordance with this chapter and which the Association requests be guaranteed.

(d) Validity.

No obligation issued by the Association under this section shall be terminated, canceled, or otherwise revoked, except in accordance with lawful terms and conditions prescribed by the Association. Such an obligation shall be conclusive evidence that it is in compliance with this section, has been approved, and is legal as to principal, interest, and other terms. An obligation of the Association shall be valid and incontestable in the hands of a holder, except as to fraud, duress, mutual mistake of fact, or material misrepresentation by or involving such holder.

(e) The Secretary of the Treasury.

If at any time the moneys available to the Secretary are insufficient to enable him to discharge his responsibilities under subsection (c) of this section, he shall issue notes or other obligations to the Secretary of the Treasury in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such obligations shall bear interest at a rate to be determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such obligations. The Secretary of the Treasury is authorized and directed to purchase any such obligations and for such purposes is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended. The purposes for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under this subsection. At any time, the Secretary of the Treasury may sell any such obligations, and all sales, purchases, and redemptions of such obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States.

(f) Authorization for appropriations.

There are hereby authorized to be appropriated to the Secretary such amounts as are necessary to discharge the obligations of the United States arising under this section.

(g) Lawful investments.

All obligations issued by the Association shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority and control of the United States or any officer or officers thereof. All such obligations issued pursuant to this section shall be exempt securities within the meaning of laws administered by the Securities and Exchange Commission. (Pub. L. 93–236, title II, § 210, Jan. 2, 1974, 87 Stat. 1000.)

REFERENCES IN TEXT

The Second Liberty Bond Act, referred to in subsec. (e), is act of Sept. 24, 1917, ch. 56, 40 Stat. 288, as amended, which was classified to section 745, former section 747, sections 752, 752a, 753, 754, 754a, 754b, 757, 757b, and 757c, former section 757c–1, sections 757c–2, 757c–3, 757c–4, 757d, 757e, 758, 760, and 764, former section 765, and sections 766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 712, 725 of this title.

§ 721. Loans.

(a) General.

The Association is authorized, in accordance with the provisions of this section and such rules and regulations as it shall prescribe, to make loans to the Corporation, the National Railroad Passenger Corporation, and other railroads (including a railroad in reorganization which has been found to be reorganizable under section 205 of Title 11 pursuant to section 717(b) of this title) in the region, for purposes of achieving the goals of this chapter; to a State or local or regional transportation authority pursuant to section 763 of this title; and to provide assistance in the form of loans to any railroad which (A) connects with a railroad in reorganization, and (B) is in need of financial assistance to avoid reorganization proceedings under section 205 of Title 11. No such loan shall be made by the Association to a railroad unless such loans shall, where applicable, be treated as an expense of administration. The rights referred to in the last sentence of section 205(j) of Title 11 shall in no way be affected by this chapter.

(b) Applications.

Each application for such a loan shall be made in writing to the Association in such form and with such content and other submissions as the Association shall prescribe to protect reasonably the interests of the United States. The Association shall publish a notice of the receipt of each such application in the Federal Register and shall afford interested persons an opportunity to comment thereon.

(c) Terms and conditions.

Each loan shall be extended in such form, under such terms and conditions, and pursuant to such regulations as the Association deems appropriate. Such loan shall bear interest at a rate not less than the greater of a rate determined by the Secretary of the Treasury taking into consideration (1) the rate prevailing in the private market for similar loans as determined by the Secretary of the Treasury, or (2) the current average yield on outstanding marketable obligations of the Association with remaining periods of maturity comparable to the average maturities of such loans, plus such additional charge, if any, toward covering costs of the Association as the Association may determine to be consistent with the purposes of this chapter.

(d) Modifications.

The Association is authorized to approve any modification of any provision of a loan under this section, including the rate of interest, time of payment

of interest or principal, security, or any other term or condition, upon agreement of the recipient of the loan and upon a finding by the Association that such modification is equitable and necessary or appropriate to achieve the policy declared in subsection (f) of this section.

(e) Prerequisites.

The Association shall make a finding in writing, before making a loan to any applicant under this section, that—

(1) the loan is necessary to achieve the goals of this chapter or to prevent insolvency;

(2) it is satisfied that the business affairs of the applicant will be conducted in a reasonable and prudent manner; and

(3) the applicant has offered such security as the Association deems necessary to protect reasonably the interests of the United States.

(f) Policy.

It is the intent of Congress that loans made under this section shall be made on terms and conditions which furnish reasonable assurance that the Corporation or the railroads to which such loans are granted will be able to repay them within the time fixed and that the goals of this chapter are reasonably likely to be achieved. (Pub. L. 93–236, title II, § 211, Jan. 2, 1974, 87 Stat. 1001, amended Pub. L. 94–5, § 5, Feb. 28, 1975, 89 Stat. 8.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–5, § 5(a), substituted "for purposes of achieving the goals of this chapter" for "for purposes of assisting in the implementation of the final system plan".

Subsec. (e)(1). Pub. L. 94–5, § 5(b), substituted "achieve the goals of this chapter" for "carry out the final system plan".

Subsec. (f). Pub. L. 94–5, § 5(c), substituted "goals of this chapter" for "goals of the final system plan".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 712 of this title.

§ 722. Records, audit and examination.

(a) Records.

Each recipient of financial assistance under this subchapter, whether in the form of loans, obligations, or other arrangements, shall keep such records as the Association or the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance and such other records as will facilitate an effective audit.

(b) Audit and examination.

The Association, the Secretary, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of 3 years after the implementation of the final system plan, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Association, the Secretary, or the Comptroller General may be related or pertinent to the loans, obligations or other arrangements referred to in subsection (a) of this section. The Association or any of its duly authorized representatives shall, until any financial assistance received under this subchapter has been repaid to the Association, have access to any such materials which concern any matter that may bear upon—

(1) the ability of the recipient of such financial assistance to make repayment within the time fixed therefor;

(2) the effectiveness with which the proceeds of such assistance is used; and

(3) the implementation of the final system plan and the realization of the declaration of policy of this chapter.

(Pub. L. 93–236, title II, § 212, Jan. 2, 1974, 87 Stat. 1002.)

§ 723. Emergency assistance pending implementation.

(a) Emergency assistance.

The Secretary is authorized, pending the implementation of the final system plan, to pay to the trustees of railroads in reorganization such sums as are necessary for the continued provision of essential transportation services by such railroads. Such payments shall be made by the Secretary upon such reasonable terms and conditions as the Secretary establishes, except that recipients must agree to maintain and provide service at a level no less than that in effect on January 2, 1974. Where the Secretary and the trustees agree that funds provided pursuant to this section are to be used (together with funds provided pursuant to section 725 of this title, if any) to perform program maintenance on designated rail properties until the date rail properties are conveyed under this chapter or to improve such designated properties, such agreement shall contain the conditions set forth in section 725(b) of this title.

(b) Authorization for appropriations.

There are authorized to be appropriated to the Secretary for carrying out this section such sums as are necessary, not to exceed $282,000,000, to remain available until expended. Of amounts authorized to be appropriated under this subsection, $50,000,000 shall be available solely to pay to the trustees of railroads in reorganization such sums as may be necessary to provide such railroads with amounts equal to revenues attributable to tariff increases proposed by such railroads and suspended by the Interstate Commerce Commission during the calendar year 1975, if the Secretary determines that such payments are necessary to carry out this section. (Pub. L. 93–236, title II, § 213, Jan. 2, 1974, 87 Stat. 1003, amended Pub. L. 94–5, § 6, Feb. 28, 1975, 89 Stat. 8.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–5, § 6(a), added provision that, where the Secretary and the trustees agree that funds provided pursuant to this section are to be used (together with funds provided pursuant to section 725 of this title, if any) to perform program maintenance on designated rail properties until the date rail properties are conveyed under this chapter or to improve such designated properties, such agreement contain the conditions set forth in section 725(b) of this title.

Subsec. (b). Pub. L. 94–5, § 6(b), substituted "$282,000,000" for "$85,000,000" and added provision that, of the amounts authorized to be appropriated under this subsection $50,000,000 be available solely to pay to the trustees of railroads in reorganization sums necessary to provide the railroads with amounts equal to revenues attributable to tariff increases proposed by the railroads and suspended by the Interstate Commerce Commission during

the calendar year 1975, if the Secretary determines that the payments are necessary to carry out this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 725, 743 of this title.

§ 724. Authorization for appropriations.

(a) Secretary.

There are authorized to be appropriated to the Secretary for purposes of preparing the reports and exercising other functions to be performed by him under this chapter such sums as are necessary, not to exceed $12,500,000, to remain available until expended.

(b) Office.

There are authorized to be appropriated to the Commission for the use of the Office in carrying out its functions under this chapter such sums as are necessary, not to exceed $5,000,000, to remain available until expended. The budget for the Office shall be submitted by the Commission directly to the Congress and shall not be subject to review of any kind by any other agency or official of the United States. Moneys appropriated for the Office shall not be withheld by any agency or official of the United States or used by the Commission for any purpose other than the use of the Office. No part of any other moneys appropriated to the Commission shall be withheld by any other agency or official of the United States to offset any moneys appropriated pursuant to this subsection.

(c) Association.

There are authorized to be appropriated to the Association for purposes of carrying out its administrative expenses under this chapter such sums as are necessary, not to exceed $40,000,000, to remain available until expended. (Pub. L. 93–236, title II, § 214, Jan. 2, 1974, 87 Stat. 1003, amended Pub. L. 93–488, § 1(c), Oct. 26, 1974, 88 Stat. 1464.)

AMENDMENTS

1974—Subsec. (c). Pub. L. 93–488 substituted "$40,000,000" for "$26,000,000".

§ 725. Interim agreements.

(a) Purposes.

Prior to the date upon which rail properties are conveyed to the Corporation under this chapter, the Secretary, with the approval of the Association, is authorized to enter into agreements with the trustees of the railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization)—

(1) to perform the program maintenance on designated rail properties of such railroads until the date rail properties are conveyed under this chapter;

(2) to improve rail properties of such railroads; and

(3) to acquire rail properties for lease or loan to any such railroads until the date such rail properties are conveyed under this chapter, and subsequently for conveyance pursuant to the final system plan, or to acquire interests in such rail properties owned by or leased to any such railroads or in purchase money obligations therefor.

(b) Conditions.

Agreements pursuant to subsection (a) of this section shall contain such reasonable terms and conditions as the Secretary may prescribe. In addition, agreements under paragraphs (1) and (2) of subsection (a) of this section shall provide that—

(1) to the extent that physical condition is used as a basis for determining, under section 716(f) or 743(c) of this title, the value of properties subject to such an agreement and designated for transfer to the Corporation under the final system plan, the physical condition of the properties on the effective date of the agreement shall be used; and

(2) in the event that property subject to the agreement is sold, leased, or transferred to an entity other than the Corporation, the trustees or railroad shall pay or assign to the Secretary that portion of the proceeds of such sale, lease, or transfer which reflects value attributable to the maintenance and improvement provided pursuant to the agreement.

(c) Obligations.

Notwithstanding section 720(b) of this title, the Association shall issue obligations under section 720(a) of this title in an amount sufficient to finance such agreements and shall require the Corporation to assume any such obligations. The aggregate amount of obligations issued under this section and outstanding at any one time shall not exceed $300,000,000. The Association, with the approval of the Secretary, shall designate in the final system plan that portion of such obligations issued or to be issued which shall be refinanced and the terms thereof, and that portion from which the Corporation shall be released of its obligations.

(d) Conveyance.

The Secretary may convey to the Corporation, with or without receipt of consideration, any property or interests acquired by, transferred to, or otherwise held by the Secretary pursuant to this section or section 723 of this title. (Pub. L. 93–236, title II, § 215, Jan. 2, 1974, 87 Stat. 1004, amended Pub. L. 94–5, § 7, Feb. 28, 1975, 89 Stat. 8.)

AMENDMENTS

1975—Pub. L. 94–5 expanded provisions covering interim agreements for the acquisition, maintenance, and improvement of railroad properties, substituted provisions setting out the requisite conditions of such agreements for provisions making only a general requirement that such agreements identify the type and quality of improvements to be made, raised from $150,000,000 to $300,000,000 the maximum amount of outstanding obligations, and substituted provisions directing the Association in the final system plan to designate that portion of the obligations which shall be refinanced and that portion from which the Corporation shall be released of its obligations for provisions prohibiting the Secretary's entry into agreements unless he issues regulations setting forth procedures and guidelines for the administration of this section, substituted provisions authorizing the Secretary to convey to the Corporation property or interests held by the Secretary pursuant to this section or section 723 of this title for provisions relieving the Corporation of the duty of compensating railroads in reorganization for that portion of transferred properties attributable to the acquisition, maintenance, or improvement of such properties under this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 723, 743 of this title.

SUBCHAPTER III.—CONSOLIDATED RAIL CORPORATION

§ 741. Formation and structure.

(a) Establishment.

There shall be established within 300 days after January 2, 1974, in accordance with the provisions of this section, a corporation to be known as the Consolidated Rail Corporation.

(b) Status.

The Corporation shall be a for-profit corporation established under the laws of a State and shall not be an agency or instrumentality of the Federal Government. The Corporation shall be deemed a common carrier by railroad under section 1(3) of Title 49, shall be subject to the provisions of this chapter and, to the extent not inconsistent with this chapter and the Interstate Commerce Act, shall be subject to applicable State law. The principal office of the Corporation shall be located in Philadelphia in the Commonwealth of Pennsylvania.

(c) Incorporators.

The members of the executive committee of the Association shall be the incorporators of the Corporation and shall take whatever steps are necessary to establish the Corporation, including the filing of articles of incorporation. The incorporators shall also serve as the Board of Directors of the Corporation until the stock and other securities of the Corporation are distributed to the estates of the railroads in accordance with section 743(c) of this title and shall adopt the initial bylaws of the Corporation.

(d) Board of Directors.

The Board of Directors of the Corporation shall consist of 15 individuals selected in accordance with the articles and bylaws of the Corporation: *Provided*, That so long as 50 per centum or more, as determined by the Secretary of the Treasury, of the outstanding indebtedness of the Corporation consists of obligations of the Association or other debts owing to or guaranteed by the United States, three of the members of such board shall be the Secretary, the Chairman and the president of the Association and five of the members of such board shall be individuals appointed as such by the President, by and with the advice and consent of the Senate.

(e) Initial capitalization.

In order to carry out the final system plan the Corporation is authorized to issue stock and other securities. Common stock shall be issued initially to the estates of railroads in reorganization in the region in exchange for rail properties conveyed to the Corporation pursuant to the final system plan. Nothing in this subsection shall preclude the Corporation from repurchasing the common stock initially issued through payments out of profits in order to establish an employee stock ownership plan; and nothing in this subsection shall preclude the recipients of common stock initially issued from establishing an employee stock ownership plan.

(f) Audit and expenditures.

So long as 50 per centum or more, as determined by the Secretary of the Treasury, of the outstanding indebtedness of the Corporation consists of obligations of the Association or other debts owing to or guaranteed by the United States, the Corporation shall be subject to the provisions of the Government Corporation Control Act for the purposes of a Federal Government audit.

(g) Annual report.

The Corporation shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on all activities and accomplishments of the Corporation during the preceding fiscal year. (Pub. L. 93–236, title III, § 301, Jan. 2, 1974, 87 Stat. 1004.)

REFERENCES IN TEXT

Interstate Commerce Act, referred to in subsec. (b), is classified to chapters 1, 8, 12, 13 and 19 of Title 49, Transportation.

The Government Corporation Control Act, referred to in subsec. (f), is classified generally to section 841 et seq. of Title 31, Money and Finance.

CODIFICATION

Subsec. (f) of this section, in the original, consisted of provisions amending section 856 of Title 31 in addition to the text set out. Such provisions were omitted for purposes of codification.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 711 of this title.

§ 742. Powers and duties of the corporation.

The Corporation shall have all of the powers and is subject to all of the duties vested in it under this chapter, in addition to the powers conferred upon it under the laws of the State or States in which it is incorporated and the powers of a railroad in any State in which it operates. The Corporation is authorized and directed to—

(a) acquire rail properties designated in the final system plan to be transferred or conveyed to it;

(b) operate rail service over such rail properties except as provided under sections 744(e) and 791(d)(3) of this title;

(c) rehabilitate, improve, and modernize such rail properties; and

(d) maintain adequate and efficient rail services.

So long as 50 per centum or more, as determined by the Secretary of the Treasury, of the outstanding indebtedness of the Corporation consists of obligations of the Association or other debts owing to or guaranteed by the United States, the Corporation shall not engage in activities which are not related to transportation. (Pub. L. 93–236, title III, § 302, Jan. 2, 1974, 87 Stat. 1005.)

§ 743. Valuation and conveyance of rail properties.

(a) Deposit with court.

Within 10 days after delivery of a certified copy of a final system plan pursuant to section 719(c) of this title—

(1) the Corporation, in exchange for the rail properties of the railroads in reorganization in the region and of railroads leased, operated, or controlled by railroads in reorganization in the region

to be transferred to the Corporation, shall deposit with the special court all of the stock and other securities of the Corporation and obligations of the Association designated in the final system plan to be exchanged for such rail properties;

(2) each profitable railroad operating in the region purchasing rail properties from a railroad in reorganization in the region, or from a railroad leased, operated, or controlled by a railroad in reorganization in the region, as provided in the final system plan shall deposit with the special court the compensation to be paid for such rail properties.

(b) Conveyance of rail properties.

(1) The special court shall, within 10 days after deposit under subsection (a) of this section of the securities of the Corporation, obligations of the Association, and compensation from the profitable railroads operating in the region, order the trustee or trustees of each railroad in reorganization in the region to convey forthwith to the Corporation and the respective profitable railroads operating in the region, all right, title, and interest in the rail properties of such railroad in reorganization and shall itself order the conveyance of all right, title, and interest in the rail properties of any railroad leased, operated, or controlled by such railroad in reorganization that are to be conveyed to them under the final system plan as certified to such court under section 719(d) of this title.

(2) All rail properties conveyed to the Corporation and the respective profitable railroads operating in the region under this section shall be conveyed free and clear of any liens or encumbrances, but subject to such leases and agreements as shall have previously burdened such properties or bound the owner or operator thereof in pursuance of an arrangement with any State, or local or regional transportation authority under which financial support from such State, or local or regional transportation authority was being provided on January 2, 1974, for the continuance of rail passenger service or any lien or encumbrance of no greater than 5 years' duration which is necessary for the contractual performance by any person of duties related to public health or sanitation. Such conveyances shall not be restrained or enjoined by any court.

(3) Notwithstanding anything to the contrary contained in this chapter, if railroad rolling stock is included in the rail properties to be conveyed, such conveyance may only be effected if the profitable railroad operating in the region or the Corporation to whom the conveyance is made assumes all of the obligations under any conditional sale agreement, equipment trust agreement, or lease in respect to such rolling stock and such conveyance is made subject thereto; and the provisions of this chapter shall not affect the title and interests of any lessor, equipment trust trustee, or conditional sale vendee or assignee under such conditional sale agreement, equipment trust agreement of lease under section 205(j) of Title 11.

(4) Notwithstanding anything to the contrary contained in this chapter, if a railroad in reorganization has leased rail properties from a lessor that is neither a railroad nor controlled by or affiliated with a railroad, and such lease has been approved by the lessee railroad's reorganization court prior to January 2, 1974, conveyance of such lease may only be effected if the Corporation or the profitable railroad to whom the conveyance is made assumes all of the terms and conditions specified in the lease, including the obligation to pay the specified rent to the non-railroad lessor.

(c) Findings and distribution.

(1) After the rail properties have been conveyed to the Corporation and profitable railroads operating in the region under subsection (b) of this section, the special court, giving due consideration to the findings contained in the final system plan, shall decide—

(A) whether the transfers or conveyances—

(i) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to the Corporation in exchange for the securities and the other benefits accruing to such railroad as a result of such exchange, as provided in the final system plan and this chapter, and

(ii) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to a profitable railroad operating in the region, in accordance with the final system plan,

are in the public interest and are fair and equitable to the estate of each railroad in reorganization in accordance with the standard of fairness and equity applicable to the approval of a plan of reorganization or a step in such a plan under section 205 of Title 11, or fair and equitable to a railroad that is not itself in reorganization but which is leased, operated, or controlled by a railroad in reorganization;

(B) whether the transfers or conveyances are more fair and equitable than is required as a constitutional minimum; and

(C) what portion of the proceeds received by a railroad in reorganization from an entity other than the Corporation for the sale, lease, or transfer of property subject to an agreement under section 723 or section 725(a) (1) or (2) of this title reflects value attributable to the maintenance or improvement provided pursuant to the agreement.

(2) If the special court finds that the terms of one or more exchanges for securities and other benefits are not fair and equitable to an estate of a railroad in reorganization, or to a railroad leased, operated, or controlled by a railroad in reorganization, which has transferred rail properties pursuant to the final system plan, it shall—

(A) enter a judgment reallocating the securities of the Corporation in a fair and equitable manner if it has not been fairly allocated among the railroads transferring rail properties to the Corporation; and

(B) if the lack of fairness and equity cannot be completely cured by a reallocation of the Corporation's securities, order the Corporation to provide for the transfer to the railroad of other securities of the Corporation or obligations of the Association as designated in the final system plan in such

nature and amount as would make the exchange or exchanges fair and equitable; and

(C) if the lack of fairness and equity cannot be completely cured by reallocation of the Corporation's securities or by providing for the transfer of other securities of the Corporation or obligations of the Association as designated in the final system plan, enter a judgment against the Corporation.

(3) If the special court finds that the terms of one or more conveyances of rail properties to a profitable railroad operating in the region in accordance with the final system plan are not fair and equitable, it shall enter a judgment against such profitable railroad. If the special court finds that the terms of one or more conveyances or exchanges for securities or other benefits are fairer and more equitable than is required as a constitutional minimum, then it shall order the return of any excess securities, obligations, or compensation to the Corporation or a profitable railroad so as not to exceed the constitutional minimum standard of fairness and equity.

(4) Upon making the findings referred to in this subsection, the special court shall order distribution of the securities, obligations, and compensation deposited with it under subsection (b) of this section to the trustee or trustees of each railroad in reorganization in the region who conveyed right, title, and interest in rail properties to the Corporation and the respective profitable railroads under such subsection.

(d) Appeal.

A finding or determination entered pursuant to subsection (c) of this section may be appealed directly to the Supreme Court of the United States in the same manner that an injunction order may be appealed under section 1253 of Title 28: *Provided*, That such appeal is exclusive and shall be filed in the Supreme Court not more than 5 days after such finding or determination is entered by the special court. The Supreme Court shall dismiss any such appeal within 7 days after the entry of such an appeal if it determines that such an appeal would not be in the interest of an expeditious conclusion of the proceedings and shall grant the highest priority to the determination of any such appeals which it determines not to dismiss. (Pub. L. 93–236, title III, § 303, Jan. 2, 1974, 87 Stat. 1005, amended Pub. L. 94–5, § 8, Feb. 28, 1975, 89 Stat. 9.)

AMENDMENTS

1975—Subsec. (c)(1)(C). Pub. L. 94–5 added subsec. (c)(1)(C).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 725, 741, 744, 772, 778 of this title.

§ 744. Termination of rail service.

(a) Discontinuance.

Except as provided in subsections (c) and (f) of this section, (1) rail service on rail properties of a railroad in the region which transfers to the Corporation or to profitable railroads operating in the region all or substantially all of its rail properties designated for such conveyance in the final system plan, and (2) rail service on rail properties of a profitable railroad operating in the region which transfers substantially all of its rail properties to the Corporation or to other railroads pursuant to the final system plan may be discontinued to the extent such discontinuance is not precluded by the terms of the leases and agreements referred to in section 743(b)(2) of this title if—

(A) the final system plan does not designate rail service to be operated over such rail properties; and

(B) not sooner than 30 days following the effective date of the final system plan the trustee or trustees of the applicable railroad in reorganization or a profitable railroad give notice in writing of intent to discontinue such rail service on a date certain which is not less than 60 days after the date of such notice; and

(C) the notice required by paragraph (B) of this subsection is sent by certified mail to the Governor and State transportation agencies of each State and to the government of each political subdivision of each State in which such rail properties are located and to each shipper who has used such rail service during the previous 12 months.

(b) Abandonment.

(1) Rail properties over which rail service has been discontinued under subsection (a) of this section may not be abandoned sooner than 120 days after the effective date of such discontinuance except as provided in subsections (c) and (f) of this section. Thereafter, except as provided in subsection (c) of this section, such rail properties may be abandoned upon 30 days' notice in writing to all those required to receive notice under paragraph (2)(C) of subsection (a) of this section.

(2) In any case in which rail properties proposed to be abandoned under this section are designated by the final system plan as rail properties which are suitable for use for other public purposes (including roads or highways, other forms of mass transportation, conservation, and recreation), such rail properties shall not be sold, leased, exchanged, or otherwise disposed of during the 180-day period beginning on the date of notice of proposed abandonment under this section unless such rail properties have first been offered, upon reasonable terms, for acquisition for public purposes

(c) Limitations.

Rail service may be discontinued and rail properties may be abandoned under subsections (a) and (b) of this section notwithstanding any provision of the Interstate Commerce Act or the constitution or law of any State or the decision of any court or administrative agency of the United States or of any State. No rail service may be discontinued and no rail properties may be abandoned pursuant to this section—

(1) after 2 years from the effective date of the final system plan or more than 2 years after the final payment of any rail service continuation subsidy is received, whichever is later; or

(2) if a shipper, a State, the United States, a local or regional transportation authority, or any responsible person offers—

(A) a rail service continuation subsidy which covers the difference between the revenue attributable to such rail properties and the avoidable costs of providing service on such rail prop-

erties plus a reasonable return on the value of such rail properties;

(B) a rail service continuation subsidy which is payable pursuant to a lease or agreement with a State, or a local or regional transportation authority, under which financial support was being provided on January 2, 1974, for the continuance of rail passenger service; or

(C) to purchase, pursuant to subsection (d) of this section, such rail properties in order to operate rail service over such properties.

If a rail service continuation subsidy is offered, the government or person offering the subsidy shall enter into an operating agreement with the Corporation or any responsible person (including a government entity) under which the Corporation or such person (including a government entity) will operate rail service over such rail properties and receive the difference between the revenue attributable to such properties and the avoidable costs of providing service on such rail properties and the trustee of any railroad in reorganization shall receive a reasonable rate of return on the value of any rail properties for which a rail service is operated under such subsidy.

(d) Purchase.

If an offer to purchase is made under subsection (c)(2)(C) of this section, such offer shall be accompanied by an offer of a rail service continuation subsidy. Such subsidy shall continue until the purchase transaction is completed, unless a railroad assumes operations over such rail properties on its own account pursuant to an order or authorization of the Commission. Whenever a railroad in reorganization in the region or a profitable railroad gives notice of intent to discontinue service pursuant to subsection (a) of this section, such railroad shall, upon the request of anyone apparently qualified to make a purchase offer promptly make available its most recent reports on the physical condition of such property together with such traffic and revenue data as would be required under subpart B of part 1121 of chapter X of title 49 of the Code of Federal Regulations and such other data necessary to ascertain the avoidable costs of providing service over such rail properties.

(e) Abandonment by Corporation.

After the rail system to be operated by the Corporation under the final system plan has been in operation for 2 years, the Commission may authorize the Corporation to abandon any rail properties as to which it determines that rail service over such properties is not required by the public convenience and necessity. The Commission may, at any time after the effective date of the final system plan, authorize additional rail service in the region or authorize the abandonment of rail properties which are not being operated by the Corporation or by any other person. Determinations by the Commission under this subsection shall be made pursuant to applicable provisions of the Interstate Commerce Act.

(f) Interim abandonment.

After January 2, 1974, no railroad in reorganization may discontinue service or abandon any line of railroad other than in accordance with the provisions of this chapter, unless it is authorized to do so by the Association and unless no affected State or local or regional transportation authority reasonably opposes such action, notwithstanding any provision of any other Federal law, the constitution or law of any State, or decision or order of, or the pendency of any proceeding before any Federal or State court, agency, or authority. (Pub. L. 93–236, title III, § 304, Jan. 2, 1974, 87 Stat. 1008.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subsecs. (c) and (e) of this section, is classified to chapters 1, 8, 12, 13 and 19 of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 715, 742, 763 of this title.

SUBCHAPTER IV.—LOCAL RAIL SERVICES

§ 761. Findings and purpose.

(a) Findings.

The Congress finds and declares that—

(1) The Nation is facing an energy shortage of acute proportions in the next decade.

(2) Railroads are one of the most energy-efficient modes of transportation for the movement of passengers and freight and cause the least amount of pollution.

(3) Abandonment, termination, or substantial reduction of rail service in any locality will adversely affect the Nation's long-term and immediate goals with respect to energy conservation and environmental protection.

(4) Under certain circumstances the cost to the taxpayers of rail service continuation subsidies would be less than the cost of abandonment of rail service in terms of lost jobs, energy shortages, and degradation of the environment.

(b) Purpose.

Therefore, it is declared to be the purpose of the Congress to authorize the Secretary to maintain a program of rail service continuation subsidies. (Pub. L. 93–236, title IV, § 401, Jan. 2, 1974, 87 Stat. 1010.)

§ 762. Rail service continuation subsidies.

(a) General.

The Secretary shall provide financial assistance in accordance with this section for the purpose of rail service continuation subsidies. For purposes of subsection (b)(1) of this section the Federal share of a rail service continuation subsidy shall be 70 percentum and the State share shall be 30 per centum. For purposes of subsection (b)(2) of this section a State receiving discretionary assistance shall be required to contribute at least 30 per centum of the cost of the program for which the Federal assistance is provided.

(b) Entitlement.

(1) Each State in the region is entitled to an amount for rail service continuation subsidies from 50 per centum of the sums appropriated each fiscal year for such purpose in the ratio which the total rail mileage in such State, as determined by the Secretary and measured in point-to-point length (excluding yard tracks and sidings), bears to the total rail mileage in all the States in the region, measured in the same manner, except that the entitlement of each State shall be no less than 3 per

centum, and the entitlement of no State shall be more than 10 per centum, of 50 per centum of the funds appropriated. In the event that the total amount allocated under this formula, due to the application of the maximum and minimum limitations which it establishes, is greater or less than 50 per centum of the funds appropriated, the excess or deficiency, as the case may be, shall be added to or deducted from the Secretary's discretionary fund provided for in paragraph (2) of this subsection. The entitlement of any State which is withheld in accordance with this section and any sums not used or committed by a State during the preceding fiscal year shall be paid into the discretionary fund provided for in paragraph (2) of this subsection.

(2) The Secretary is authorized to provide discretionary financial assistance to a State or a local or regional transportation authority in the region for the purpose of continuing local rail services, including assistance for the purposes enumerated in section 763 of this title.

(c) Eligibility.

(1) A State in the region is eligible to receive rail service continuation subsidies pursuant to subsection (b) of this section in any fiscal year if—

(A) the State has established a State plan for rail transportation and local rail services which is administered or coordinated by a designated State agency and such plan provides for the equitable distribution of such subsidies among State, local, and regional transportation authorities;

(B) the State agency has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail services; employs or will employ, directly or indirectly, sufficient trained and qualified personnel; and maintains or will maintain adequate programs of investigation, research, promotion, and development with provision for public participation:

(C) the State provides satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this subchapter to the State; and

(D) the State complies with the regulations of the Secretary issued under this section.

(2) Rail freight services eligible for rail service continuation subsidies pursuant to subsection (b) of this section are—

(A) those rail services of railroads in reorganization in the region which the final system plan does not designate to be continued;

(B) those rail services in the region which have been at any time during the 5 year period prior to January 2, 1974, or which are subsequent to January 2, 1974, owned, leased, or operated by a State agency or a local or regional transportation authority or with respect to which a State, a political subdivision thereof, or a local or regional transportation authority has invested at any time during the 5 year period prior to January 2, 1974, or invests subsequent to January 2, 1974, substantial sums for improvement or maintenance of rail service; and

(C) those rail services in the region with respect to which the Commission issues a certificate of abandonment effective on or after January 2, 1974.

(d) Regulations.

Within 90 days after January 2, 1974, the Secretary shall issue, and may from time to time amend, regulations with respect to basic and discretionary rail service continuation subsidies.

(e) Payment.

The Secretary shall pay to each State in the region an amount equal to its entitlement under subsection (b)(1) of this section. Any amounts which are not expended or committed by a State pursuant to subsection (b) of this section during the ensuing fiscal year shall be returned by such State to the Secretary, who may use such amounts in accordance with subsection (b)(2) of this section.

(f) Term.

A rail service continuation subsidy between a State, or a local or regional authority, and the Corporation or other responsible person (including a government entity) may not exceed a term of 2 years.

(g) Record, audit, and examination.

(1) Each recipient of financial assistance under this section, whether in the form of grants, subgrants, contracts, subcontracts, or other arrangements, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of 3 years after completion of the project or undertaking referred to in paragraph (1) of this subsection, have access for the purpose of audit and examination to any books, documents, papers, and records of such receipts[1] which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, contracts, or other arrangements referred to in such paragraph.

(h) Withholding.

If the Secretary, after reasonable notice and opportunity for a hearing to any State agency, finds that a State is not eligible for rail service continuation subsidies under subsections (c) and (d) of this section, payment to such State shall not be made until there is no longer any failure to comply.

(i) Authorization for appropriations.

(1) There is authorized to be appropriated to carry out the purposes of this section such sums as are necessary, not to exceed $90,000,000, for each of the 2 fiscal years including and following the effective date of the final system plan. Such sums as are appropriated shall remain available until expended.

[1] So in original. Probably should be "recipients".

(2) One-half of the sums appropriated pursuant to the authorization of this subsection shall be reserved for allocation to States in the region under subsection (b)(1) of this section. One-half of the sums appropriated pursuant to the authorization of this subsection shall be reserved for distribution by the Secretary under subsection (b)(2) of this section.

(j) Definition.

As used in this section, "rail service continuation subsidies" means subsidies calculated in accordance with the provisions of section 715(d)(3) of this title to cover costs of operating adequate and efficient rail service, including where necessary improvement and maintenance of tracks and related facilities. (Pub. L. 93–236, title VI, § 402, Jan. 2, 1974, 87 Stat. 1010, amended Pub. L. 93–488, § 1(d), Oct. 26, 1974, 88 Stat. 1464.)

AMENDMENTS

1974—Subsec. (c). Pub. L. 93–488 designated existing provisions as par. (1), and in par. (1) as so designated, redesignated existing pars. (1) to (4) as subpars. (A) to (D) respectively, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 716, 763 of this title.

§ 763. Acquisition and modernization loans.

(a) Acquisition.

If a State which is eligible for assistance under section 762(c) of this title or a local or regional transportation authority has made an offer to purchase any rail properties of a railroad pursuant to section 744(c)(2)(C) of this title or other lawful authority, the Secretary is authorized to direct the Association to provide loans to such State or local or regional transportation authority not to exceed 70 per centum of the purchase price: *Provided, however,* That any rail service for which a State agency or local or regional transportation authority receives such loan is no longer eligible for a rail service continuation subsidy pursuant to section 762 of this title.

(b) Modernization.

In addition to such acquisition loans, the Secretary is authorized to direct the Association to provide additional assistance not to exceed 70 per centum of the cost of restoring or repairing such rail properties to such condition as will enable safe and efficient rail transportation operations over such rail properties. Such financial assistance may be in the form of a loan or the guarantee of a loan. The Association shall provide such financial assistance as the Secretary may direct under this section and shall adopt regulations describing its procedures for such assistance. With the approval of the Secretary, a State may expend sums received by it under section 762 of this title for acquisition and modernization pursuant to this section. (Pub. L. 93–236, title IV, § 403, Jan. 2, 1974, 87 Stat. 1012, amended Pub. L. 93–488, § 1(e), Oct. 26, 1974, 88 Stat. 1465.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–488 substituted in the proviso "rail service for which a State agency or local or regional transportation authority receives such loan" for "recipient of such loan".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 712, 716, 721, 762 of this title.

SUBCHAPTER V.—EMPLOYEE PROTECTION

§ 771. Definitions.

As used in this subchapter unless the context otherwise requires—

(1) "acquiring railroad" means a railroad, except the Corporation, which seeks to acquire or has acquired, pursuant to the provisions of this chapter, all or a part of the rail properties of one or more of the railroads in reorganization, the Corporation, or a profitable railroad;

(2) "employee of a railroad in reorganization" means a person who, on the effective date of a conveyance of rail properties of a railroad in reorganization to the Corporation or to an acquiring railroad, has an employment relationship with either said railroad in reorganization or any carrier (as defined in parts I and II of the Interstate Commerce Act) which is leased, controlled, or operated by the railroad in reorganization except a president, vice president, treasurer, secretary, comptroller, and any other person who performs functions corresponding to those performed by the foregoing officers;

(3) "protected employee" means any employee of an acquiring railroad adversely affected by a transaction and any employee of a railroad in reorganization who on January 2, 1974, have not reached age 65;

(4) "class or craft of employees" means a group of employees, recognized and treated as a unit for purposes of collective bargaining, which is represented by a labor organization that has been duly authorized or recognized pursuant to the Railway Labor Act as its representative for purposes of collective bargaining;

(5) "representative of a class or craft of employees" means a labor organization which has been duly authorized or recognized as the collective bargaining representative of a class or craft of employees pursuant to the Railway Labor Act;

(6) "deprived of employment" means the inability of a protected employee to obtain a position by the normal exercise of his seniority rights with the Corporation after properly electing to accept employment therewith or, the subsequent loss of a position and inability, by the normal exercise of his seniority rights under the applicable collective bargaining agreements, to obtain another position with the Corporation: *Provided, however,* That provisions in existing collective bargaining agreements of a railroad in reorganization, which do not require a protected employee, in the normal exercise of seniority rights, to make a change in residence, in order to maintain his protection, will be preserved and will also be extended and be applicable to all other protected employees of that same craft or class. It shall not, however, include any deprivation of employment by reason of death, retirement, resignation, dismissal or disciplinary suspension for cause, failure to work due to illness or disability, nor any severance of employment covered by subsections (d) and (e) of section 775 of this title;

(7) "employee adversely affected with respect to his compensation" means a protected employee who suffers a reduction in compensation;

(8) "transaction" means actions taken pursuant to the provisions of this chapter or the results thereof; and

(9) "change in residence" means transfer to a work location which is located either (A) outside a radius of 30 miles of the employee's former work location and farther from his residence than was his former work location or (B) is located more than 30 normal highway route miles from his residence and also farther from his residence than was his former work location. (Pub. L. 93–236, title V, § 501, Jan. 2, 1974, 87 Stat. 1012.)

REFERENCES IN TEXT

Parts I and II of the Interstate Commerce Act, referred to in par. (2), are classified to sections 1 et seq. and 301 et seq., respectively, of Title 49, Transportation.

The Railway Labor Act, referred to in pars. (4) and (5), is classified to section 151 et seq. of this title.

§ 772. Employment offers.

(a) Applicable law.

The Corporation and, where applicable, the Association shall be subject to the provisions of the Railway Labor Act and shall be considered employees for purposes of the Railroad Retirement Act, Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act. The Corporation, in addition, shall, except as otherwise specifically provided by this chapter, be subject to all Federal and State laws and regulations applicable to carriers by railroad.

(b) Mandatory offer.

The Corporation shall offer employment, to be effective as of the date of a conveyance or discontinuance of service under the provisions of this chapter, to each employee of a railroad in reorganization who has not already accepted an offer of employment by the Association, where applicable, or an acquiring railroad. Such offers of employment to employees represented by labor organizations will be confined to their same craft or class. The Corporation shall apply to said employees the protective provisions of this subchapter.

(c) Association.

After the transfer of rail properties pursuant to section 743 of this title, the Association, in employing any additional employees, shall give priority consideration to employees of a railroad in reorganization and the provisions of this subchapter shall apply to any such employees employed by the Association as if they were employees of the Corporation. (Pub. L. 93–236, title V, § 502, Jan. 2, 1974, 87 Stat. 1013.)

REFERENCES IN TEXT

Railway Labor Act, referred to in subsec. (a), is classified to section 151 et seq. of this title.

Railroad Retirement Act, referred to in subsec. (a), is classified to section 231 et seq. of this title.

Railroad Retirement Tax Act, referred to in subsec. (a), is classified to section 3201 et seq. of Title 26, Internal Revenue Code.

Railroad Unemployment Insurance Act, referred to in subsec. (a), is classified to section 351 et seq. of this title.

§ 773. Assignment of work.

The Corporation shall have the right to assign, allocate, reassign, reallocate, and consolidate work formerly performed on the rail properties acquired pursuant to the provisions of this chapter from a railroad in reorganization to any location, facility, or position on its system provided it does not remove said work from coverage of a collective-bargaining agreement and does not infringe upon the existing classification of work rights of any craft or class of employees at the location or facility to which said work is assigned, allocated, reassigned, reallocated, or consolidated and shall have the right to transfer to an acquiring railroad the work incident to the rail properties or facilities acquired by said acquiring railroad pursuant to this chapter, subject, however, to the provisions of section 778 of this title. (Pub. L. 93–236, title V, § 503, Jan. 2, 1974, 87 Stat. 1014.)

§ 774. Collective-bargaining agreements.

(a) Interim application.

Until completion of the agreements provided for under subsection (d) of this section, the Corporation shall, as though an original party thereto, assume and apply on the particular lines, properties, or facilities acquired all obligations under existing collective-bargaining agreements covering all crafts and classes employed thereon, except that the Agreement of May 1936, Washington, D.C. and provisions in other existing job stabilization agreements shall not be applicable to transactions effected pursuant to this chapter with respect to which the provisions of section 775 of this title shall be superseding and controlling. During this period, employees of a railroad in reorganization who have seniority on the lines, properties, or facilities acquired by the Corporation pursuant to this chapter shall have prior seniority roster rights on such acquired lines, properties, or facilities.

(b) Single implementing agreement.

On or before the date of the adoption of the final system plan by the Board of Directors of the Association as provided in section 717(c) of this title, the representatives of the various classes or crafts of the employees of a railroad in reorganization involved in a conveyance pursuant to this chapter and representatives of the Corporation shall commence negotiation of a single implementing agreement for each class and craft of employees affected providing (1) the identification of the specific employees of the railroad in reorganization to whom the Corporation offers employment; (2) the procedure by which those employees of the railroad in reorganization may elect to accept employment with the Corporation; (3) the procedure for acceptance of such employees into the Corporation's employment and their assignment to positions on the Corporation's system; (4) the procedure for determining the seniority of such employees in their respective crafts or classes on the Corporation's system which shall, to the extent possible, preserve their prior seniority rights; and (5) the procedure for determining equitable adjustment in rates of comparable positions. If no agreement with respect to the matters referred to in this subsection is reached by the end of 30 days

after the commencement of negotiations, the parties shall within an additional 10 days select a neutral referee and, in the event they are unable to agree upon the selection of such referee, then the National Mediation Board shall immediately appoint a referee. After a referee has been designated, a hearing on the dispute shall commence as soon as practicable. Not less than 10 days prior to the effective date of any conveyance pursuant to the provisions of this chapter, the referee shall resolve and decide all matters in dispute with respect to the negotiation of said implementing agreement or agreements and shall render a decision which shall be final and binding and shall constitute the implementing agreement or agreements between the parties with respect to the transaction involved. The salary and expenses of the referee shall be paid pursuant to the provisions of the Railway Labor Act.

(c) Relationship to other provisions.

Notwithstanding failure for any reason to complete implementing agreements provided for in subsection (b) of this section, the Corporation may proceed with a conveyance of properties, facilities, and equipment pursuant to the provisions of this chapter and effectuate said transaction: *Provided*, That all protected employees shall be entitled to all of the provisions of such agreements, as finally determined, from the time they are adversely affected as a result of any such conveyance.

(d) New collective-bargaining agreements.

Not later than 60 days after the effective date of any conveyance pursuant to the provisions of this chapter, the representatives of the various classes or crafts of the employees of a railroad in reorganization involved in a conveyance and representatives of the Corporation shall commence negotiations of new collective-bargaining agreements for each class and craft of employees covering the rates of pay, rules, and working conditions of employees who are employees of the Corporation, which collective-bargaining agreement shall include appropriate provisions concerning rates of pay, rules, and working conditions but shall not include any provisions for job stabilization resulting from any transaction effected pursuant to this chapter which may exceed or conflict with those established or prescribed herein. (Pub. L. 93–236, title V, § 504, Jan. 2, 1974, 87 Stat. 1014.)

REFERENCES IN TEXT

Railway Labor Act, referred to in subsec. (b) of this section, is classified to section 151 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 777 of this title.

§ 775. Employee protection.

(a) Equivalent position.

A protected employee whose employment is governed by a collective-bargaining agreement will not, except as explicitly provided in this subchapter, during the period in which he is entitled to protection, be placed in a worse position with respect to compensation, fringe benefits, rules, working conditions, and rights and privileges pertaining thereto.

(b) Monthly displacement allowance.

A protected employee, who has been deprived of employment or adversely affected with respect to his compensation shall be entitled to a monthly displacement allowance computed as follows:

(1) Said allowance shall be determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his total time paid for during the last 12 months immediately prior to his being adversely affected in which he performed compensated service more than 50 per centum of each of such months, based upon his normal work schedule, and by dividing separately the total compensation and the total time paid for by 12, thereby producing the average monthly compensation and average monthly time paid for; and, if an employee's compensation in his current position is less in any month in which he performs work than the aforesaid average compensation, he shall be paid the difference, less any time lost on account of voluntary absences other than vacations, but said protected employee shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of his average monthly time, *Provided, however*, That—

(A) in determining compensation in his current employment the protected employee shall be treated as occupying the position, producing the highest rate of pay to which his qualifications and seniority entitle him under the applicable collective bargaining agreement and which does not require a change in residence;

(B) the said monthly displacement allowance shall be reduced by the full amount of any unemployment compensation benefits received by the protected employee and shall be reduced by an amount equivalent to any earnings of said protected employee in any employment subject to the Railroad Retirement Act and 50 per centum of any earnings in any employment not subject to the Railroad Retirement Act;

(C) a protected employee's average monthly compensation shall be adjusted from time to time thereafter to reflect subsequent general wage increases;

(D) should a protected employee's service total less than 12 months in which he performs more than 50 per centum compensated service based upon his normal work schedule in each of said months, his average monthly compensation shall be determined by dividing separately the total compensation received by the employee and the total time for which he was paid by the number of months in which he performed more than 50 per centum compensated service based upon his normal work schedule; and

(E) the monthly displacement allowance provided by this section shall in no event exceed the sum of $2,500 in any month except that such amount shall be adjusted to reflect subsequent general wage increases.

(2) A protected employee's average monthly compensation under this section shall be based upon the rate of pay applicable to his employment and shall include increases in rates of pay not in fact paid but which were provided for in national

railroad labor agreements generally applicable during the period involved.

(3) If a protected employee who is entitled to a monthly displacement allowance served as an agent or a representative of a class or craft of employees on either a full- or part-time basis in the 12 months immediately preceding his being adversely affected, his monthly displacement allowance shall be computed by taking the average of the average monthly compensation and average monthly time paid for of the protected employees immediately above and below him on the same seniority roster or his own monthly displacement allowance, whichever is greater.

(4) An employee and his representative shall be furnished with a protected employee's average monthly compensation and average monthly time paid for, computed in accordance with the terms of this subsection, together with the data upon which such computations are based, within 30 days after the protected employee notifies the Corporation in writing that he has been deprived of employment or adversely affected with respect to his compensation.

(c) Duration of displacement allowance.

The monthly displacement allowance provided for in subsection (b) of this section shall continue until the attainment of age 65 by a protected employee with 5 or more years of service on January 2, 1974, and, in the case of a protected employee who has less than 5 years service on such date, shall continue for a period equal to his total prior years of service: *Provided,* That such monthly displacement allowance shall terminate upon the protected employee's death, retirement, resignation, or dismissal for cause; and shall be suspended for the period of disciplinary suspension for cause, failure to work due to illness or disability, voluntary furlough, or failure to retain or obtain a position available to him by the exercise of his seniority rights in accordance with the provisions of this section.

(d) Transfer.

(1) A protected employee who has been deprived of employment may be required by the Corporation, in inverse seniority order and upon reasonable notice, to transfer to any bona fide vacancy for which he is qualified in his same class or craft of employee [1] on any part of the Corporation's system and shall then be governed by the collective-bargaining agreement applicable on the seniority district to which transferred. If such transfer requires a change in residence, any such protected employee may choose (A) to voluntarily furlough himself at his home location and have his monthly displacement allowance suspended during the period of voluntary furlough, or (B) to be severed from employment upon payment to him of a separation allowance computed as provided in subsections (e) and (f) of this section, which separation allowance shall be in lieu of all other benefits provided by this subchapter.

(2) Such protected employee shall not be required to transfer to a location requiring a change in residence unless there is a bona fide need for his services at such location. Such bona fide need for services contemplates that the transfer be to a position which has not and cannot be filled by employees who are not required to make a change in residence in the seniority district involved and which, in the absence of this section, would have required the employment of a new employee.

(3) Such protected employee who, at the request of the Corporation, has once accepted and made a transfer to a location requiring a change in residence shall not be required again to so transfer for a period of 3 years.

(4) Transfers to vacancies requiring a change in residence shall be subject to the following:

(A) The vacancy shall be first offered to the junior qualified protected employee deprived of employment in the seniority district where the vacancy exists, and each such employee shall have 20 days to elect one of the options set forth in paragraph (1) of this subsection. If that employee elects not to accept the transfer, it will then be offered in inverse seniority order to the remaining qualified, protected employees deprived of employment on the seniority district, who will each have 20 days to elect one of the options set forth in paragraph (1) of this subsection.

(B) If the vacancy is not filled by the procedure in paragraph (4)(A) of this subsection, the vacancy will then be offered in the inverse order of seniority to the qualified protected employees deprived of employment on the system and each of such employees will be afforded 30 days to elect one of the options set forth in paragraph (1) of this subsection.

(C) The provisions of this paragraph shall not prevent the adoption of other procedures pursuant to an agreement made by the Corporation and representative of the class or craft of employees involved.

(e) Separation allowance.

A protected employee who is tendered and accepts an offer by the Corporation to resign and sever his employment relationship in consideration of payment to him of a separation allowance, and any protected employee whose employment relationship is severed in accordance with subsection (d) of this section, shall be entitled to receive a lump-sum separation allowance not to exceed $20,000 in lieu of all other benefits provided by this subchapter. Said lump-sum separation allowance, in the case of a protected employee who had not less than 3 nor more than 5 years of service as of January 2, 1974, shall amount to 270 days' pay at the rate of the position last held and, in the case of a protected employee having had 5 or more years' service, shall amount to the number of days' pay indicated below at the rate of the position last held dependent upon the age of the protected employee at the time of such termination of employment:

60 or under	360 days' pay
61	300 days' pay
62	240 days' pay
63	180 days' pay
64	120 days' pay

[1] So in original. Probably should be "employment".

(f) Termination allowance.

The Corporation may terminate the employment of an employee of a railroad in reorganization, who has less than 3 years' service as of January 2, 1974: *Provided, however,* That in such event the terminated employee shall be entitled to receive a lump sum separation allowance in an amount determined as follows:

2 to 3 years' service	180 days' pay at the rate of the position last held.
1 to 2 years' service	90 days' pay at the rate of the position last held.
Less than 1 years' service	5 days' pay at the rate of the position last held for each month of service.

(g) Moving expense benefits.

Any protected employee who is required to make a change of residence as the result of a transaction shall be entitled to the following benefits—

(1) Reimbursement for all expenses of moving his household and other personal effects, for the traveling expense of himself and members of his family, including living expenses for himself and his family, and for his own actual wage loss, not to exceed 10 working days: *Provided,* That the Corporation or acquiring railroad shall, to the same extent provided above, assume said expenses for any employee furloughed within 3 years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provisions of this section unless such claim is presented to the Corporation or acquiring railroad within 90 days after the date on which the expenses were incurred.

(2)(A)(i) If the protected employee owns, or is under a contract to purchase, his own home in the locality from which he is required to move and elects to sell said home, he shall be reimbursed for any loss suffered in the sale of his home for less than its fair market value. In each case the fair market value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The Corporation or an acquiring railroad shall in each instance be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person.

(ii) A protected employee may elect to waive the provisions of paragraph (2)(A)(i) of this subsection and to receive, in lieu thereof, an amount equal to his closing costs which are ordinarily paid for and assumed by a seller of real estate in the jurisdiction in which the residence is located. Such costs shall include a real estate commission paid to a licensed realtor (not to exceed $3,000 or 6 per centum of sale price, whichever is less), and any prepayment penalty required by the institution holding the mortgage; such costs shall not include the payment of any "points" by the seller.

(B) If the protected employee holds an unexpired lease on a dwelling occupied by him as his home, he shall be protected from all loss and cost in securing the cancellation of said lease.

(C) No claim for costs or loss shall be paid under the provisions of this paragraph unless the claim is presented to the Corporation or an acquiring railroad within 90 days after such costs or loss are incurred.

(D) Should a controversy arise with respect to the value of the home, the costs or loss sustained in its sale, the costs or loss under a contract for purchase, loss or cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or his representative, and the Corporation or an acquiring railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner: One to be selected by the employee or his representative and one by the Corporation or acquiring railroad and these two, if unable to agree upon a valuation within 30 days, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days a third qualified real estate appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(h) Application of subchapter.

Should a railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving a protected employee of benefits to which he otherwise would have become entitled under this subchapter, the provisions of this subchapter will apply to such employee. (Pub. L. 93–236, title V, § 505, Jan. 2, 1974, 87 Stat. 1015.)

REFERENCES IN TEXT

Railroad Retirement Act, referred to in subsec. (b)(1)(B), is classified to section 231 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 771, 774, 777, 778 of this title.

§ 776. Contracting out.

All work in connection with the operation or services provided by the Corporation on the rail lines, properties, equipment, or facilities acquired pursuant to the provisions of this chapter and the maintenance, repair, rehabilitation, or modernization of such lines, properties, equipment, or facilities which has been performed by practice or agreement in accordance with provisions of the existing contracts in effect with the representatives of the employees of the classes or crafts involved shall continue to be performed by said Corporation's employees, including employees on furlough. Should the Corporation lack a sufficient number of employees, including em-

ployees on furlough, and be unable to hire additional employees, to perform the work required, it shall be permitted to subcontract that part of such work which cannot be performed by its employees, including those on furlough, except where agreement by the representatives of the employees of the classes or crafts involved is required by applicable collective-bargaining agreements. The term "unable to hire additional employees" as used in this section contemplates establishment and maintenance by the Corporation of an apprenticeship, training, or recruitment program to provide an adequate number of skilled employees to perform the work. (Pub. L. 93–236, title V, § 506, Jan. 2, 1974, 87 Stat. 1019.)

§ 777. Arbitration.

Any dispute or controversy with respect to the interpretation, application, or enforcement of the provisions of this subchapter, except section 774(d) of this title and those disputes or controversies provided for in subsection (g)(2)(D) of section 775 of this title and subsection (b) of section 774 of this title which have not been resolved within 90 days, may be submitted by either party to an Adjustment Board for a final and binding decision thereon as provided in section 153, Second, of this title, in which event the burden of proof on all issues so presented shall be upon the Corporation or, where applicable, the Association. (Pub. L. 93–236, title V, § 507, Jan. 2, 1974, 87 Stat. 1020.)

§ 778. Acquiring railroads.

An acquiring railroad shall offer such employment and afford such employment protection to employees of a railroad from which it acquires properties or facilities pursuant to this subchapter, and shall further protect its own employees who are adversely affected by such acquisition, as shall be agreed upon between the said acquiring railroad and the representatives of such employees prior to said acquisition: *Provided, however,* That the protection and benefits provided for protected employees in such agreements shall be the same as those specified in section 775 of this title: *And provided further, however,* That unless and until such agreements are reached, the acquiring railroad shall not enter into purchase agreements pursuant to section 743 of this title. (Pub. L. 93–236, title V, § 508, Jan. 2, 1974, 87 Stat. 1020.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 773 of this title.

§ 779. Payments of benefits.

The Corporation, the Association (where applicable), and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees pursuant to the provisions of this subchapter. The Corporation, the Association (where applicable), and acquiring railroads shall then be reimbursed for such actual amounts paid protected employees, not to exceed the aggregate sum of $250,000,000, pursuant to the provisions of this subchapter by the Railroad Retirement Board upon certification to said Board by the Corporation, the Association (where applicable), and acquiring railroads of the amounts paid such employees. Such reimbursement shall be made from a separate account maintained in the Treasury of the United States to be know[1] as the Regional Rail Transportation Protective Account. There is hereby authorized to be appropriated to such protective account annually such sums as may be required to meet the obligations payable hereunder, not to exceed in the aggregate, however, the sum of $250,000,000. There is further authorized to be appropriated to the Railroad Retirement Board annually such sums as may be necessary to provide for additional administrative expenses to be incurred by the Board in the performance of its functions under this section. (Pub. L. 93–236, title V, § 509, Jan. 2, 1974, 87 Stat. 1020.)

SUBCHAPTER VI.—MISCELLANEOUS PROVISIONS

§ 791. Relationship to other laws.

(a) Antitrust.

(1) Except as specifically provided in paragraph (2) of this subsection, no provision of this chapter shall be deemed to convey to any railroad or employee or director thereof any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(2) The antitrust laws are inapplicable with respect to any action taken to formulate or implement the final system plan where such action was in compliance with the requirements of such plan.

(3) As used in this subsection, "antitrust laws" includes the Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended; the Federal Trade Commission Act (38 Stat. 717), as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended; and the antitrust laws of any State or subdivision thereof.

(b) Commerce and bankruptcy.

The provisions of the Interstate Commerce Act and the Bankruptcy Act are inapplicable to transactions under this chapter to the extent necessary to formulate and implement the final system plan whenever a provision of any such Act is inconsistent with this chapter.

(c) Environment.

(1)[2] The provisions of section 4332(2)(C) of Title 42 shall not apply with respect to any action taken under authority of this chapter before the effective date of the final system plan.

(d) Northeast corridor.

(1) Rail properties designated in accordance with section 716(c)(1)(C) of this title shall be leased or may (at its option) be purchased or otherwise acquired by the National Railroad Passenger Corporation. The Corporation shall negotiate an appropriate sale or lease agreement with the National Railroad Passenger Corporation as provided in the final system plan.

(2) Properties acquired by purchase, lease, or otherwise pursuant to this subsection shall be im-

[1] So in original.

[2] Subsection enacted without a par. (2).

proved in order to meet the goal set forth in section 716(a)(3) of this title, relating to improved high-speed passenger service, by the earliest practicable date after January 2, 1974.

(3) The Secretary shall begin the necessary engineering studies and improvements on January 2, 1974.

(4) The final system plan shall provide for any necessary coordination with freight or commuter services of use of the facilities designated in section 716(c)(1)(C) of this title. Such coordination may be effectuated through a single operating entity, designated in the final system plan, or as mutually agreed upon by the interested parties.

(5) Construction or improvements made pursuant to this subsection may be made in consultation with the Corps of Engineers. (Pub. L. 93–236, title VI, § 601(a)–(d), Jan. 2, 1974, 87 Stat. 1021.)

REFERENCES IN TEXT

Act of July 2, 1890, referred to in subsec. (a)(3), is popularly known as the Sherman Antitrust Act, and is classified to sections 1–7 of Title 15, Commerce and Trade.

Act of October 15, 1914, referred to in subsec. (a)(3), popularly known as the Clayton Act, and is classified to sections 12, 13, 14–19, 20, 21, 22–27, and 44 of Title 15, and sections 52 and 53 of Title 29, Labor.

The Federal Trade Commission Act, referred to in subsec. (a)(3), is classified to section 41 et seq. of Title 15.

Sections 73 and 74 of the Act of August 27, 1894, referred to in subsec. (a)(3), are popularly known as the Wilson Tariff Act, and are classified to sections 8 and 9 of Title 15.

Act of June 19, 1936, referred to in subsec. (a)(3), is popularly known as the Robinson-Patman Antidiscrimination Act, and is classified to sections 13, 13a, 13b, and 21a of Title 15.

Interstate Commerce Act, referred to in subsec. (b), is classified to chapters 1, 8, 12, 13 and 19 of Title 49, Transportation.

Bankruptcy Act, referred to in subsec. (b), is classified to section 1 et seq. of Title 11, Bankruptcy.

CODIFICATION

A subsec. (e) of section 601 of Pub. L. 93–236, which was designated in the original, as "Emergency Service", amended section 1(16) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 716, 742 of this title.

§ 792. Annual evaluation by the Secretary.

As part of his annual report each year, the Secretary shall transmit to Congress each year a comprehensive report on the effectiveness of the Association and the Corporation in implementing the purposes of this chapter, together with any recommendations for additional legislative or other action. (Pub. L. 93–236, title VI, § 602, Jan. 2, 1974, 87 Stat. 1022.)

§ 793. Freight rates for recyclables.

The Commission shall, by expedited proceedings, adopt appropriate rules under the Interstate Commerce Act which will eliminate discrimination against the shipment of recyclable materials in rate structures and in other Commission practices where such discrimination exists. (Pub. L. 93–236, title VI, § 603, Jan. 2, 1974, 87 Stat. 1023.)

REFERENCES IN TEXT

Interstate Commerce Act, referred to in text, is classified to chapters 1, 8, 12, 13 and 19 of Title 49, Transportation.

§ 794. Tax payments to States.

(a) Notwithstanding any other provision of law, no railroad in reorganization shall withhold from any State, or any political subdivision thereof, the payment of the portion of any tax owed by such railroad to such State or subdivision, which portion has been collected by such railroad from any tenant thereof.

(b) Any railroad which violates the provisions of subsection (a) of this section by withholding any portion of a tax referred to in such subsection shall be fined not more than $10,000 for each such violation. (Pub. L. 93–236, title VI, § 605, as added Pub. L. 94–5, § 9, Feb. 28, 1975, 89 Stat. 9.)